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NOUVEAU

RECUEIL GÉNÉRAL

DE

TRAITÉS

ET

AUTRES ACTES RELATIFS AUX RAPPORTS DE DROIT INTERNATIONAL.

CONTINUATION DU GRAND RECUEIL

DE

G. FR. DE MARTENS

PAR

Felix Stoerk
Professeur de droit public à l'Université de Greifswald
Membre de l'Institut de droit international.

DEUXIÈME SÉRIE.

TOME XXXII.

LEIPZIG
LIBRAIRIE DIETERICH
THEODOR WEICHER
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TOME XXXII.

PREMIÈRE LIVRAISON.

LEIPZIG
LIBRAIRIE DIETERICH
THEODOR WEICHER
1905.

1.

GRANDE-BRETAGNE, FRANCE.

Arrangement diplomatique conclu au sujet du Maroc,*) de l'Egypte, de Terre-Neuve, du Siam, de Madagascar, des Nouvelles-Hébrides; signé à Londres le 8 avril 1904 et correspondance y relative.

Parliamentary Papers, April 1904.

The Marquess of Lansdowne to Sir E. Monson.

Sir Foreign Office, April 8, 1904.

I have from time to time kept your Excellency fully informed of the progress of my negotiations with the French Ambassador for the complete settlement of a series of important questions in which the interests of Great Britain and France are involved. These negotiations commenced in the spring of last year, and have been continued with but slight interruptions up to the present time.

Such a settlement was notoriously desired on both sides of the Channel, and the movement in its favour received a powerful impulse from the visit paid to France by His Majesty King Edward VII in May last and by the return visit of President Loubet to this country. Upon the latter occasion, the President was accompanied by the distinguished Statesman who has so long presided over the French Ministry of Foreign Affairs. It is a matter for congratulation that his presence afforded to His Majesty's Government the great advantage of a full and frank exchange of ideas. It left us in no doubt that a settlement of the kind which both Governments desired, and one which would be mutually advantageous to both countries, was within our reach.

The details of the questions at issue have since been examined in confidential discussions with the French Ambassador, to whose personal knowledge of many of the points involved and wide diplomatic experience it is largely due that I am now able to announce to you the Agreement which has been arrived at. I inclose copies of the Convention and Declarations which were signed to-day by his Excellency and myself.

Among the questions which it has been our duty to examine, that of the position of Great Britain in Egypt and of France in Morocco have necessarily occupied a foremost place.

From a British point of view there is no more remarkable episode in recent history than that which concerns the establishment and the

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*) V. **N. R. G.** 2e s. VI. 624.

gradual development of British influence in Egypt. Our occupation of that country, at first regarded as temporary, has by the force of circumstances become firmly established. Under the guidance of the eminent public Servant who has for the last twenty years represented His Majesty's Government in that country, Egypt has advanced by rapid strides along the path of financial and material prosperity. The destruction of the power of the Mahdi and the annexation of the Soudan have increased that influence and added to the stability of our occupation.

But while these developments have, in fact, rapidly modified the international situation in Egypt, the financial and administrative system which prevails is a survival of an order of things which no longer exists, and is not only out of date but full of inconvenience to all concerned. It is based on the very elaborate and intricate provisions of the Law of Liquidation of 1880, and the London Convention of 1885. With the financial and material improvement of Egypt, these provisions have become a hindrance instead of an aid to the development of the resources of the country. The friction, inconvenience, and actual loss to the Egyptian Treasury which it has occasioned have been pointed out by Lord Cromer on many occasions in his annual Reports. It is well described in the following passage which occurs in Lord Milner's standard work on Egypt:

„The spectacle of Egypt, with her Treasury full of money, yet not allowed to use that money for an object which, on a moderate calculation, should add 20 per cent. to the wealth of the country, is as distressing as it is ludicrous. Every year that passes illustrates more forcibly the injustice of maintaining, in these days of insured solvency, the restrictions imposed upon the financial freedom of the Egyptian Government at a time of bankruptcy — restrictions justifiable then, but wholly unjustifiable now. No one would object to the continuance of the arrangement by which certain revenues are paid in the first instance to the Caisse de la Dette. But as long as these revenues suffice to cover the interest on the Debt and to provide any sinking fund which the Powers may deem adequate, the balance ought simply to be handed over to the Egyptian Government to deal with as it pleases, and the antiquated distinction of ‚authorized' and ‚unauthorized' expenditure should be swept away. No reform is more necessary than this, if the country is to derive the greatest possible benefit from the improved condition of its finances which has been attained by such severe privations."

The functions of the Caisse, originally limited to receiving certain assigned revenues on behalf of the bondholders, have in practice become much more extensive. Its members have claimed to control, on behalf of the Powers of Europe, the due execution by the Egyptian Government of all the complicated international Agreements regarding the finances of the country. Their assent is necessary before any new loan can be issued. No portion of the General Reserve Fund can be used without their sanction; and all assigned revenues are paid directly to them by the collecting Departments without passing through the Ministry of Finance. In the same way, the receipts of the railways, telegraphs, and port of Alexandria,

administered by a Board consisting of three members — an Englishman, a Frenchman, and an Egyptian — are paid, after deduction of the expenses, into the Caisse.

The inconvenience of the arrangements which I have described has not been contested by the French Government, and they have shown themselves fully disposed to concert with us the means of bringing the system of financial administration into more close accord with the facts as they now present themselves.

The case of Morocco presents different features. The condition of that country has for a long time been unsatisfactory and fraught with danger. The authority of the Sultan over a large portion of his dominions is that of a titular Chief rather than of a Ruler. Life and property are unsafe, the natural resources of the country are undeveloped, and trade, though increasing, is hampered by the political situation.

In these respects the contrast between Morocco and Egypt is marked. In spite of well-meant efforts to assist the Sultan, but little progress has been effected, and at this moment the prospect is probably as little hopeful as it has ever been. Without the intervention of a strong and civilized Power there appears to be no probability of a real improvement in the condition of the country.

It seems not unnatural that, in these circumstances, France should regard it as falling to her lot to assume the task of attempting the regeneration of the country. Her Algerian possessions adjoin those of the Sultan throughout the length of a frontier of several hundred miles. She has been compelled from time to time to undertake military operations of considerable difficulty, and at much cost, in order to put an end to the disturbances which continually arise amongst tribes adjoining the Algerian frontier — tribes which, although nominally the subjects of the Sultan, are, in fact, almost entirely beyond his control. The trade of France with Morocco is again — if that across the Algerian frontier be included — of considerable importance, and compares not unfavourably with our own. In these circumstances, France, although in no wise desiring to annex the Sultan's dominions or to subvert his authority, seeks to extend her influence in Morocco, and is ready to submit to sacrifices and to incur responsibilities with the object of putting an end to the condition of anarchy which prevails upon the borders of Algeria.

His Majesty's Government are not prepared to assume such responsibilities, or to make such sacrifices, and they have therefore readily admitted that if any European Power is to have a predominant influence in Morocco, that Power is France. They have, on the other hand, not lost sight of the fact that Great Britain also has interests in Morocco which must be safeguarded in any arrangement to be arrived at between France and Great Britain. The first of these has reference to the facilities to be afforded to our commerce, as well as to that of other countries, in Morocco. Our imports to that country amount to a considerable percentage of the whole; and it is obvious that, given improved methods of administation, a reform of the currency, and cheaper land transport,

foreign trade with Morocco should be largely increased — an increase in which British merchants would certainly look to have their share.

The rights and privileges of Great Britain in Morocco in respect of commercial affairs are regulated by the Convention of Commerce and Navigation concluded between the two countries in December 1856,*) and the rights of British subjects to reside or travel in the dominions of the Sultan are provided for in the general Treaty between the two countries of the same year.

The Convention entitles British subjects to trade freely in the Sultan's dominions on the same terms as natives or subjects of the most favoured nation, and stipulates that their right to buy and sell is not to be restrained or prejudiced by any monopoly, contract, or exclusive privilege, save as regards a limited number of imported articles, which are specifically mentioned.

The Treaty gives to British subjects the right of residing or travelling in the dominions of the Sultan, and further entitles the British Government to appoint Consular officers at the cities and ports in Morocco, and establishes Consular jurisdiction over British subjects, besides providing for the usual privileges in respect of the right of British subjects to hire dwellings and warehouses, and to acquire and dispose of property, for their exemption from military service and forced loans, and for the security of their personsand property.

It would have been impossible for His Majesty's Government to consent to any arrangement which dit not leave these rights intact and the avenues of trade completely open to British enterprise.

A second condition which His Majesty's Government regard as essential is also readily accepted by the French Government. It has reference to certain portions of the Moorish littoral, upon which both Governments desire that no Power shall be allowed to establish itself or to erect fortifications or strategical works of any kind.

A third condition has reference to Spain. An adequate and satisfactory recognition of Spanish interests, political and territorial, has been from the first, in the view of His Majesty's Government, an essential element in any settlement of the Morocco question.

Spain has possessions on the Moorish coast, and the close proximity of the two countries has led to a reasonable expectation on the part of the Spanish Government and people that Spanish interests would receive special consideration in any arrangement affecting the future of Morocco.

His Majesty's Government have observed with satisfaction that, so far as the principle involved is concerned, the two Governments are in entire accord, and that it is the object of the French, as it is that of the British Government, to insure that the special consideration, which both agree is due to Spain, shall be shown in respect of questions of form no less than in respect of her material interests.

The Declaration, of which a copy is attached to this despatch, embodies the terms upon which the two Governments propose to deal with the cases of Egypt and Morocco respectively.

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*) V. **N. R. G.** XVII. 1e P. 128. 143.

The first, and from the point of view of Great Britain the most important, part of the Agreement which has been concluded in respect of Egypt is the recognition by the French Government of the predominant position of Great Britain in that country. They fully admit that the fulfilment of the task upon which we entered in 1883 must not be impeded by any suggestion on their part that our interest in Egypt is of a temporary character, and they undertake that, so far as they are concerned, we shall not be impeded in the performance of that task. This undertaking will enable us to persue our work in Egypt without, so far as France is concerned, arousing international susceptibilities. It is true that the other Great Powers of Europe also enjoy, in virtue of existing arrangements, a privileged position in Egypt; but the interests of France — historical, political, and financial — so far outweigh those of the other Powers, with the exception of Great Britain, that so long as we work in harmony with France, there seems no reason to anticipate difficulty at the hands of the other Powers.

The importance of this engagement cannot be overrated. Although the attitude of the French Government in regard to Egyptian questions has been considerably modified of late years — in great measure owing to the harmonious relations which have recently prevailed between the Representatives of the two countries in Cairo — the possibility of French opposition has had, nevertheless, constantly to be taken into account; its disappearance will be an unqualified benefit to both Governments, and will greatly facilitate the progress of the task which we have untertaken in Egypt.

It has long been clear that in the interests off all parties, it was desirable to introduce very considerable modifications in the international arrangements established in Egypt for the protection of foreign bondholders. The new Khedivial Decree annexed to the Declaration and accepted by the French Government will, if it be accepted by the other Powers concerned, have the effect of giving to the Egyptian Government a free hand in the disposal of its own resources so long as the punctual payment of interest on the Debt is assured. The Caisse de la Dette will still remain, but its functions will be strictly limited to receiving certain assigned revenues on behalf of the bondholders, and insuring the due payment of the coupon. The Caisse will, as soon as the Decree has come into operation, have no right and no opportunity of interfering in the general administration of the country. The branches of revenue assigned to the service of the Debt have also been changed, and the land tax has been substituted for the customs duties and railway receipts. This arrangement will give the bondholders the advantage of having their rights secured on the most stable and certain branch of the Egyptian revenue, and one which shows a constant tendency to increase. On the other hand, the Egyptian Government will no longer be hampered in the administration of the customs and railways, and, as a corollary, the mixed administration which has hitherto controlled the railways, telegraphs, and port of Alexandria, will disappear.

The fund derived from the economies of the conversion of 1890, which since that date has been uselessly accumulated in the coffers of the Caisse,

and which now amounts to 5,500,000 *l.*, will be handed over to the Egyptian Government, who will be free to employ it in whatever way most conduces to the welfare of the people.

Though we still maintain our view as to the right of the Egyptian Government to pay off the whole of their debt at any time after 1905, the French Government have strongly urged the claims of the bondholders to special consideration in view of the past history of the Egyptian Debt. In order to meet their wishes in this matter the present arrangement provides that the conversion of the Guaranteed and Privileged Debt shall be postponed till 1910 and the conversion of the Unified Debt till 1912 — a postponement which confers a very material advantage on the existing bondholders, and should remove all grounds of complaint whenever the conversion is carried through.

The Decree abolishes various other provisions of the old Law which experience has shown to be unnecessary and inconvenient. It will be sufficient to mention the two most important of these. In the first place, the consent of the Caisse will no longer be necessary in the event of the Egyptian Government desiring to raise further loans for productive expenditure or for other reasons. In the second place, the plan devised in the London Convention of fixing a limit to the administrative expenditure of the Egyptian Government has been swept away. The manifold inconvenience, and even loss, to which this system has given rise in a country which is in the process of development, and where, consequently, new administrative needs are constantly making themselves felt, have been frequently pointed out by Lord Cromer.

Your Excellency will not fail to observe that the Khedivial Decree in which these measures are embodied will require the consent of Austria, Germany, Italy, and Russia before it can be promulgatet by the Egyptian Government. The amount of the Egyptian Debt held in these countries is, however, quite insignificant. France and Great Britain, indeed, between them hold nearly the whole of the Debt, with the exception of the small proportion which is held in Egypt itself. In these circumstances it is reasonable to hope that no serious difficulties will be encountered in other quarters regarding proposals which are considered by the two Governments as giving entire satisfaction to the legitimate interests of the bondholders, and which those two Governments are formally pledged to support. Should, however, unexpected obstacles present themselves, we shall, in virtue of our Agreement with France, be able to count upon the support of French diplomacy in our endeavours to overcome them.

It is necessary that I should add a few words as to the other points in which the internal rights of sovereignty of the Egyptian Government are subject to international interference. There are the consequences of the system known as that of the Capitulations. It comprises the jurisdiction of the Consular Courts and of the Mixed Tribunals, the latter applying a legislation which requires the consent of all the European Powers, and some extra-European Powers, before it can be modified. In Lord Cromer's opinion the time is not ripe for any organic changes in this direction, and

His Majesty's Government have not, therefore, on the present occasion, proposed any alterations in this respect. At the same time, whenever Egypt is ready for the introduction of a legislative and judicial system similar to that which exists in other civilized countries, we have sufficient grounds for counting upon French co-operation in effecting the necessary changes.

It will be observed that an Article has been inserted in the Agreement declaring the adhesion of His Majesty's Government to the Treaty of the 29th October, 1888,*) providing for the neutrality of the Suez Canal in time of war. In consequence of the reservation made by Lord Salisbury at the time respecting the special situation of this country during the occupation of Egypt, some doubt existed as to the extent to which Great Britain considered herself bound by the stipulations of the Convention. It appears desirable to dissipate any possible misunderstanding by specifically declaring the adhesion of His Majesty's Government. It is, however, provided that certain executive stipulations which are incompatible with Lord Salisbury's reservation should remain in abeyance during the continuance of the occupation.

In regard to Morocco, your Excellency will find that the Convention contains the following stipulations on the part of the two Powers: the Government of the French Republic places upon record a Declaration that it has no intention of disturbing the political status of Morocco; that the rights which Great Britain enjoys in virtue of Treaties and Conventions and usage are to be respected; and that British commerce, including goods in transit through French territory and destined for the Moorish market, is to be treated on a footing of absolute equality with that of France. His Majesty's Government, on the other hand, recognize that it belongs to France to maintain order in Morocco, and to assist the Moorish Government in improving the administrative, economic, financial, and military conditions of that country.

The two Governments undertake a mutual obligation to construct no fortifications themselves, and to allow no other Power to construct fortifications on the more important portions of the Moorish sea-board.

Finally, with regard to Spain, both Governments place on record their admission that that country has exceptional interests in certain portions of Morocco, and that those interests are to be respected by both Powers alike. The French Government has undertaken to come to an understanding with that of Spain as to the mode in which effect can best be given to this stipulation, and to communicate to the Government of His Majesty the terms of the Arrangement which may be made with this object.

Your Excellency is familiar with the circumstances which confront us in the Colony of Newfoundland.

The Treaty of Utrecht (1713) by Article XIII recognized that the Island of Newfoundland should thenceforth belong wholly to Great Britain, but it gave to the French „the right to catch fish and to dry them on

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*) **V. N. R. G.** 2e s. XV. 557.

land on that part of the coast which stretches from Cape Bonavista to the northern point of the island, and from thence running down by the western side to Point Riche." They were not to erect any buildings there besides stages made of boards and huts necessary and usual for drying fish, or to resort to the island beyond the time necessary for fishing and drying of fish. This right was renewed and confirmed by Article V of the Treaty of Paris, 1763.*)

By the Treaty of Versailles, 1783,**) the French renounced their right of fishing from Cape Bonavista to Cape St. John on the east coast, and acquired the right to fish from Cape St. John on the east coast to Cape Ray on the west, passing by the north. This change was made in order to prevent the frequent quarrels which took place between the fishermen of the two nations. With the same object Great Britain undertook, in the Declaration of the 30th September, 1783, appended to the Treaty, that measures should be taken to prevent British subjects from interrupting in any manner, by their competition, the fishery of the French during the temporary exercise of it granted to them by the Treaties, and that fixed settlements by the British on the portion of the coast above described should be removed.

Great diversities of opinion have arisen between the two Governments as to the interpretation of these stipulations. To summarize the chief heads of the dispute, the French have contended that the Treaties give them an exclusive right of fishery on the coast mentioned, and that all British fixed settlements, of whatever nature, on the coast are contrary to the Treaties. On the other hand, the British contention has been that British subjects have the right to fish concurrently with the French, provided that they do not interrupt them, and that the fixed settlements referred to in the British Declaration of 1783 are fixed fishing settlements only, and that other fixed settlements are not contrary to the Declaration.

Periodical attempts have been made since 1844 to dispose of the various questions arising out of these differences. Negotiations for the purpose were undertaken successively in 1857, 1860, 1874, 1881, and 1885, but without success. On two occasions — in 1857 and 1885 — Conventions were actually signed limiting the area within which the French rights were to be exercised, and, in return, acknowledging those rights and conceding some further privileges. These arrangements were, however viewed with such strong disapproval by the Colonial Legislature that they were in both cases abandoned and were never ratified.

On each occasion the failure of the arrangement was succeeded by a renewed assertion of the French rights in their extremest form, and instructions were issued to the French cruisers stationed off the coast which threatened to lead to a serious rupture.

The Bait Act, which was passed by the Newfoundland Legislature in 1886, and enforced in 1887, and by which the sale of bait to French

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*) V. **R.** I. 33. **R.** 2. I. 104. **) V. **R.** II. 315. **R.** 2. III. 503.

fishing vessels on all parts of the shore not affected by the Treaties was prohibited, was a fresh source of irritation, and gave rise to fresh controversies.

The French, restricted in their supply of this essential material for the pursuit of the cod-fishery, resorted in considerable numbers to the establishment of lobster fisheries on the portion of the coast reserved to them, and contested the legality of the British lobster factories which had long been established there. The British Government, on the other hand, contended, on behalf of the Colony, that the taking and preserving of lobsters were not included in the privileges conceded to French fishermen by the Treaties.

The negotiations which ensued on this question resulted in the establishment in 1890 of a modus vivendi, under which both parties were allowed to take part in the lobster fishery, under certain restrictions. These, however, have proved inconvenient in their practical working, and do not afford means for the necessary protection of the fishery from deterioration by excessive destruction of the lobsters.

In 1891 an Agreement was arrived at between the two Governments for referring to arbitration the questions in dispute with regard to the lobster fishery. This, again, has never been acted upon, in consequence of the refusal of the Colonial Government and Legislature to comply with the condition made by the French Government that the necessary legislation for carrying the award into effect should first be passed.

In 1901 a fresh attempt was made to effect a settlement, but the negotiation was again unsuccessful, as the Colony declined to make concessions in regard to the sale of bait unless the French system of bounties on the sale of fish by their citizens were abandoned or at least modified in important particulars.

The summary which I have given is sufficient to show how constant a source of risk and anxiety this question has been.

It was obviously our duty to find some means of terminating the condition of things which I have described. It has been fraught with inconvenience to all concerned. It has involved a constant risk of collisions between the two Governments, in consequence of disputes as to the rights of persons engaged in the fishing industry, both on shore and at sea. Such collisions have, in fact, been averted only by the tact, moderation, and good temper exhibited by the naval officers of both Powers, to whose cognizance these local disputes have in the first instance been brought.

As for the shore, no land has, up to the present time, been leased or granted on the Treaty Shore except in terms which require the lessee or grantee to comply with the stipulations of the Treaties, and with any orders by the Crown for their enforcement; so long, therefore, as any possible doubts remained as to the security of tenure on the parts of the coast affected, capitalists could not embark freely on the development of its resources. Indeed, if the French view were correct, and had been strictly enforced, it would have been impossible to develop them at all.

It is, therefore, no exaggeration to say that to the Colony the existence of these French rights throughout an extent representing some two-fifths of the whole coastline of the island have meant the obstruction of all useful local developments as well as of mining and other industrial enterprises.

Under the Convention which has been concluded it is provided that the French rights of landing on the Treaty Shore conferred by Article XIII of the Treaty of Utrecht shall be once and for all abandoned.

For this abandonment His Majesty's Government recognize that compensation is due both to the persons actually engaged in the fishing industrie and to the French nation.

The former will be obliged to remove their property from the Treaty Shore, and to give up the premises which they have there erected. For the loss thus inflicted on them, and for any loss clearly due to the compulsory abandonment of their business, compensation will be paid to individuals. A simple and expeditious form of procedure has been adopted for determining the amount of these indemnities. But irrespectively of this question of personal compensation, the French Government claim with reason that they are required to renounce on behalf of the nation a privilege which cannot be estimated merely at its present pecuniary value. On grounds, therefore, of sentiment, as well as of interest, they cannot be expected to surrender it unless they are able to show that they have secured an adequate equivalent elsewhere.

To meet this legitimate view we have offered to France at various points concessions of importance to her, but which can in our opinion be granted without detriment to British interests.

These are:

a) A rectification of the Eastern frontier of the Colony of the Gambia, which will give to France an access to the navigable portion of that river.

b) The cession of a small group of islands known as the Iles de Los, situated opposite to Konakry. These islands are of small extent and of no intrinsic value. Their geographical position, however, connects them closely with French Guinea, and their possession by any Power other than France might become a serious menace to that Colony.

c) A modification of the boundary fixed between the French and British possessions in Nigeria by the Convention of the 14th June, 1898. The line then laid down has had the effect of compelling French convoys, when proceeding from the French possessions on the Niger to those in the neighbourhood of Lake Chad, to follow a circuitous and waterless route, so inconvenient that they have been obliged to obtain permission to pass by a shorter and less inconvenient way through British territory. The new boundary will bring to France an accession of territory, the importance of which is due mainly to the fact that it gives her the use of a direct route between the points which I have mentioned.

An Agreement has also been come to with the French Government in regard to the interests of the two Powers in the neighbourhood of

Siam. It will be in your Excellency's recollection that by an Agreement arrived at in 1896,*) France and Great Britain undertook to refrain from any armed intervention, or the acquisition of special privileges, in the Siamese possessions which were included within the basin of the Menam River. It was explained by my predecessor that the restriction of the undertaking thus given did not imply any doubts as to the validity of the Siamese title to those portions of her possessions which lay outside the Menam Valley. To this view His Majesty's Government adhere. The Agreement of 1896 has none the less been regarded as implying that the relations of the two Powers to Siam and to one another in respect to the regions lying to the east and to the west of the guaranteed area differed from their relations to her and to one another in respect of the central portion of the kingdom. In point of fact, British influence has for some time past prevailed in the western, and French influence in the eastern, portions of the Siamese dominions. The Agreements which have been entered into with Siam by His Majesty's Government as to the Malay Peninsula, and by the French Government as to the Mekong Valley, show that the two Powers have each on its side considered themselves at liberty to acquire a preponderating influence in those parts of the Siamese Empire.

The excercise of such influence is compatible with the absence of all idea of annexing Siamese territory, and in order that this may be made abundantly clear, both parties to the Convention have placed it on record that neither of them desire to take for themselves any portion of the possessions of the King of Siam, and that they are determined to maintain the obligations which they have incurred under existing Treaties.

These Treaties, as your Excellency is aware, entitle Great Britain to most-favoured-nation treatment in all parts of the Siamese dominions.

Advantage has been taken of this opportunity to further regularize the position of Great Britain in Zanzibar and of France in Madagascar, and the two Powers have intimated their intention of endeavouring to arrive at an arrangement for putting an end to the difficulties which have arisen in the New Hebrides in consequence of the absence of any effectual mode of settling disputes as to land titles in those islands.

In the preceding observations I have endeavoured to give some account of the reasons for which, in the opinion of His Majesty's Government, the Agreements which have been concluded are, if considered by themselves and on their intrinsic merits, believed to be desirable.

It is, however, important to regard them not merely as a series of separate transactions, but as forming part of a comprehensive scheme for the improvement of the international relations of two great countries.

From this point of view their cumulative effect can scarcely fail to be advantageous in a very high degree. They remove the sources of

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*) V. **N. R. G.** 2e s. XXIII. 236.

long-standing differences, the existence of which has been a chronic addition to our diplomatic embarrassments and a standing menace to an international friendship which we have been at much pains to cultivate, and which, we rejoice to think, has completely overshadowed the antipathies and suspicions of the past.

There is this further reason for mutual congratulation. Each of the parties has been able, without any material sacrifice of its own national interests, to make to the other concessions regarded, and rightly regarded, by the recipient as of the highest importance.

The French privilege of drying fish on the Treaty Shore of Newfoundland has, for example, been lately of but little value to the persons engaged in the industry; but the existence of that privilege may be said to have, so far as our Newfoundland colonists are concerned, sterilized a great part of the littoral of the Colony.

Similarly, in Egypt the rights accruing to the French Government under the laws of 1879, 1880, and subsequent years, have not really conferred any practical benefits either upon the French nation or upon the French holders of Egyptian securities, but the existence of those rights has been a constant hindrance in the way of Egyptian administration, and has seriously retarded the progress of the country.

In Morocco His Majesty's Government have been able to gratify the natural aspirations of France, and have willingly conceded to her a privileged position, which, owing to her geographical situation, she is specially competent to occupy; but they have done this upon conditions which secure for our commerce an absolute equality of opportunity, which guarantee the neutrality of the most important portions of its sea-board, and which provide for the due recognition of Spanish requirements, which they have from the first desired to see treated with due respect.

In Siam, again, they have admitted the preponderance of France within an area over which she has, in fact, of late years, exercised a preponderating influence, and with which they have neither the desire nor the opportunity to interfere. They have, on the other hand, obtained the recognition of a corresponding British preponderance at points where they could not have tolerated the interference of another Power, and where the influence of this country has in fact already been established with the best results.

For these reasons it is fair to say that, as between Great Britain and France, the arrangement, taken as a whole, will be to the advantage of both parties.

Nor will it, we believe, be found less advantageous if it be regarded from the point of view of the relations of the two Powers with the Governments of Egypt, Morocco, and Siam. In each of these countries it is obviously desirable to put an end to a system under which the Ruler has had to shape his course in deference to the divided counsels of two great European Powers. Such a system, leading, as it must, to intrigue, to attempts to play one Power off against the other, and to un-

dignified competition, can scarcely fail to sow the seeds of international discord, and to bring about a state of things disadvantageous and demoralizing alike to the tutelary Powers, and to the weaker State which forms the object of their solicitude. Something will have been gained if the understanding happily arrived at between Great Britain and France should have the effect of bringing this condition of things to an end in regions where the interests of those two Powers are specially involved. And it may, perhaps, be permitted to them to hope that, in thus basing the composition of longstanding differences upon mutual concessions, and in the frank recognition of each other's legitimate wants and aspirations, they may have afforded a precedent which will contribute something to the maintenance of international goodwill and the preservation of the general peace.

I am, &c.
(Signed) *Lansdowne.*

Inclosure 1.

Declaration respecting Egypt and Morocco.

Article I.

His Britannic Majesty's Government declare that they have no intention of altering the political status of Egypt.

The Government of the French Republic, for their part, declare that they will not obstruct the action of Great Britain in that country by asking that a limit of time be fixed for the British occupation or in any other manner, and that they give their assent to the draft Khedivial Decree annexed to the present Arrangement, containing the guarantees considered necessary for the protection of the interests of the Egyptian bondholders, on the condition that, after its promulgation, it cannot be modified in any way without the consent of the Powers Signatory of the Convention of London of 1885.*)

It is agreed that the post of Director-General of Antiquities in Egypt shall continue, as in the past, to be entrusted to a French savant.

Article I.

Le Gouvernement de Sa Majesté Britannique déclare qu'il n'a pas l'intention de changer l'état politique de l'Egypte.

De son côté, le Gouvernement de la République Française déclare qu'il n'entravera pas l'action de l'Angleterre dans ce pays en demandant qu'un terme soit fixé à l'occupation Britannique ou de toute autre manière, et qu'il donne son adhésion au projet de Décret Khédivial qui est annexé au présent Arrangement, et qui contient les garanties jugées nécessaires pour la sauvegarde des intérêts des porteurs de la Dette Egyptienne, mais à la condition qu'après sa mise en vigueur aucune modification n'y pourra être introduite sans l'assentiment des Puissances Signataires de la Convention de Londres de 1885.*)

Il est convenu que la Direction-Générale des Antiquités en Egypte continuera d'être, comme par le passé, confiée à un savant Français.

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*) V. **N. R. G.** 2e s. XI. 88 squ.

The French schools in Egypt shall continue to enjoy the same liberty as in the past.

Article II.

The Government of the French Republic declare that they have no intention of altering the political status of Morocco.

His Britannic Majesty's Government, for their part, recognize that it appertains to France, more particularly as a Power whose dominions are conterminous for a great distance with those of Morocco, to preserve order in that country, and to provide assistance for the purpose of all administrative, economic, financial, and military reforms which it may require.

They declare that they will not obstruct the action taken by France for this purpose, provided that such action shall leave intact the rights which Great Britain, in virtue of Treaties, Conventions, and usage, enjoys in Morocco, including the right of coasting trade between the ports of Morocco, enjoyed by British vessels since 1901.

Article III.

His Britannic Majesty's Government, for their part, will respect the rights which France, in virtue of Treaties, Conventions, and usage, enjoys in Egypt, including the right of coasting trade between Egyptian ports accorded to French vessels.

Article IV.

The two Governments, being equally attached to the principle of commercial liberty both in Egypt and Morocco, declare that they will not, in those countries, countenance any inequality either in the imposition of

Les écoles Françaises en Egypte continueront à jouir de la même liberté que par le passé.

Article II.

Le Gouvernement de la République Française déclare qu'il n'a pas l'intention de changer l'état politique du Maroc.

De son côté, le Gouvernement de Sa Majesté Britannique reconnaît qu'il appartient à la France, notamment comme Puissance limitrophe du Maroc sur une vaste étendue, de veiller à la tranquillité dans ce pays, et de lui prêter son assistance pour toutes les réformes administratives, économiques, financières, et militaires dont il a besoin.

Il déclare qu'il n'entravera pas l'action de la France à cet effet, sous réserve que cette action laissera intacts les droits dont, en vertu des Traités, Conventions, et usages, la Grande-Bretagne jouit au Maroc, y compris le droit de cabotage entre les ports Marocains dont bénéficient les navires Anglais depuis 1901.

Article III.

Le Gouvernement de Sa Majesté Britannique, de son côté, respectera les droits dont, en vertu des Traités, Conventions, et usages, la France jouit en Egypte, y compris le droit de cabotage accordé aux navires Français entre les ports Egyptiens.

Article IV.

Les deux Gouvernement, également attachés au principe de la liberté commerciale tant en Egypte qu'au Maroc, déclarent qu'ils ne s'y prêteront à aucune inégalité, pas plus dans l'établissement des droits de douanes

customs duties or other taxes, or of railway transport charges.

The trade of both nations with Morocco and with Egypt shall enjoy the same treatment in transit through the French and British prossessions in Africa. An Agreement between the two Governments shall settle the conditions of such transit and shall determine the points of entry.

This mutual engagement shall be binding for a period of thirty years. Unless this stipulation is expressly denounced at least one year in advance, the period shall be extended for five years at a time.

Nevertheless, the Government of the French Republic reserve to themselves in Morocco, and His Britannic Majesty's Government reserve to themselves in Egypt, the right to see that the concessions for roads, railways, ports, &c., are only granted on such conditions as will maintain intact the authority of the State over these great undertakings of public interest.

Article V.

His Britannic Majesty's Government declare that they will use their influence in order that the French officials now in the Egyptian service may not be placed under conditions less advantageous than those applying to the British officials in the same service.

The Government of the French Republic, for their part, would make no objection to the application of analogous conditions to British officials now in the Moorish service.

Article VI.

In order to insure the free passage of the Suez Canal, His Britannic

ou autres taxes que dans l'établissement des tarifs de transport par chemin de fer.

Le commerce de l'une et l'autre nation avec le Maroc et avec l'Egypte jouira du même traitement pour le transit par les possessions Françaises et Britanniques en Afrique. Un accord entre les deux Gouvernements réglera les conditions de ce transit et déterminera les points de pénétration.

Cet engagement réciproque est valable pour une période de trente ans. Faute de dénonciation expresse faite une année au moins à l'avance, cette période sera prolongée de cinq en cinq ans.

Toutefois, le Gouvernement de la République Française au Maroc et le Gouvernement de Sa Majesté Britannique en Egypte se réservent de veiller à ce que les concessions de routes, chemins de fer, ports, &c., soient données dans des conditions telles que l'autorité de l'Etat sur ces grandes entreprises d'intérêt général demeure entière.

Article V.

Le Gouvernement de Sa Majesté Britannique déclare qu'il usera de son influence pour que les fonctionnaires Français actuellement au service Egyptien ne soient pas mis dans des conditions moins avantageuses que celles appliquées aux fonctionnaires Anglais du même service.

Le Gouvernement de la République Française, de son côté, n'aurait pas d'objection à ce que des conditions analogues fussent consenties aux fonctionnaires Britanniques actuellement au service Marocain.

Article VI.

Afin d'assurer le libre passage du Canal de Suez, le Gouvernement de

Majesty's Government declare that they adhere to the stipulations of the Treaty of the 29th October 1888 and that they agree to their being put in force. The free passage of the Canal being thus guaranteed, the execution of the last sentence of paragraph 1 as well as of paragraph 2 of Article VIII of that Treaty will remain in abeyance.

Article VII.

In order to secure the free passage of the Straits of Gibraltar, the erection of any fortifications or strategic works on that portion of the coast of Morocco comprised between, but not including, Melilla and the heights which command the right bank of the River Sebou.

This condition does not, however, apply to the places at present in the occupation of Spain on the Moorish coast of the Mediterranean.

Article VIII.

The two Governments, inspired by their feeling of sincere friendship for Spain, take into special consideration the interests which that country derives from her geographical position and from her territorial possessions on the Moorish coast of the Mediterranean. In regard to these interests the French Government will come to an understanding with the Spanish Government.

The agreement which may be come to on the subject between France and Spain shall be communicated to His Britannic Majesty's Government.

Article IX.

The two Governments agree to afford to one another their diplomatic support, in order to obtain the exe-

Sa Majesté Britannique déclare adhérer aux stipulations du Traité conclu le 29 octobre 1888 et a leur mise en vigueur. Le libre passage du Canal étant ainsi garanti, l'exécution de la dernière phrase du paragraphe 1 et celle du paragraphe 2 de l'Article VIII de ce Traité resteront suspendues.

Article VII.

Afin d'assurer le libre passage du Détroit de Gibraltar, les deux Gouvernements conviennent de ne pas laisser élever des fortifications ou des ouvrages stratégiques quelconques sur la partie de la côte Marocaine comprise entre Mélilla et les hauteurs qui dominent la rive droite du Sébou exclusivement.

Toutefois, cette disposition ne s'applique pas aux points actuellement occupés par l'Espagne sur la rive Marocaine de la Méditerranée.

Article VIII.

Les deux Gouvernements, s'inspirant de leurs sentiments sincèrement amicaux pour l'Espagne, prennent en particulière considération les intérêts qu'elle tient de sa position géographique et de ses possessions territoriales sur la côte Marocaine de la Méditerranée; et au sujet desquels le Gouvernement Français se concertera avec le Gouvernement Espagnol.

Communication sera faite au Gouvernement de Sa Majesté Britannique de l'accord qui pourra intervenir à ce sujet entre la France et l'Espagne.

Article IX.

Les deux Gouvernements conviennent de se prêter l'appui de leur diplomatie pour l'exécution des clauses

cution of the clauses of the present Declaration regarding Egypt and Morocco.

In witness whereof his Excellency the Ambassador of the French Republic at the Court of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty's Principal Secretary of State for Foreign Affairs, duly authorized for that purpose, have signed the present Declaration and have affixed thereto their seals.

Done at London, in duplicate, the 8th day of April 1904.

(L. S.) *Lansdowne.*

de la présente Déclaration relative à l'Egypte et au Maroc.

En foi de quoi son Excellence l'Ambassadeur de la République Française près Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes, et le Principal Secrétaire d'Etat pour les Affaires Etrangères de Sa Majesté Britannique, dûment autorisés à cet effet, ont signé la présente Déclaration et y ont apposé leurs cachets.

Faite à Londres, en double expédition, le 8 avril 1904.

(L. S.) *Paul Cambon.*

Annex.

Projet de décret.

Nous, Khédive d'Egypte,

Vu les Décrets mentionnés aux Annexes à la présente Loi;

Avec l'assentiment des Puissances signataires de la Convention de Londres;

Sur la proposition de notre Ministre des Finances et l'avis conforme de notre Conseil des Ministres,

Décrétons:

Titre I. De la Dette Publique.

1. Sont comprises dans la Dette Publique:
   La Dette Garantie;
   La Dette Privilégiée;
   La Dette Unifiée;
   La Dette Domaniale;
   La Dette Générale de la Daïra Sanieh.

2. Toutes ces dettes sont représentées par des titres au porteur, munis de coupons semestriels.

3. Les coupons sont payables et les titres sont remboursables en or, sans aucune déduction.

4. Les paiements et remboursements ci-dessus sont effectués, pour ce qui concerne les Dettes Garantie, Privilégiée, et Unifiée, au Caire, à Londres, à Paris, et à Berlin.

Le change des paiements à Paris et à Berlin est fixé en monnaie Française et en monnaie Allemande, par la Commission de la Dette Publique, de concert avec le Ministre des Finances, sans que ce change puisse jamais dépasser la parité de la livre sterling, ni être inférieure à 25 fr., ou 20 marks 25 pfennigs.

5. Pour ce qui concerne les Dettes Domaniale et Daïra Sanieh, les paiements et remboursements continueront à être effectués dans les mêmes villes et aux mêmes taux d'échange que jusqu'ici.

6. Il n'est pas admis d'opposition au paiement des coupons ou au remboursement des titres.

Toutefois, au cas où la déclaration de la perte ou du vol de titres ou de coupons leur paraîtrait suffisamment établie, les Administrations et banques chargées du service des emprunts auront la faculté de surseoir provisoirement au paiement des dits titres ou coupons.

7. L'intérêt annuel des obligations de la Dette Garantie est de 3 pour cent; il est payable semestriellement aux échéanches du 1er Mars et du 1er septembre.

Celui des obligations de la Dette Privilégiée est de $3^1/_2$ pour cent, payable le 15 Avril et le 15 Octobre.

Celui des obligations de la Dette Unifiée est de 4 pour cent, payable le 1er Mai et le 1er Novembre.

Celui des obligations de la Dette Domaniale est de $4^1/_4$ pour cent, payable le 1er Juin et le 1er Décembre.

Celui des obligations de la Dette Daïra Sanieh est de 4 pour cent, payable le 15 Avril et le 15 Octobre.

8. Les obligations des dettes ci-dessus ne pourront être frappées d'aucun impôt au profit du Gouvernement Egyptien.

9. Les obligations de la Dette Garantie jouissent de la garantie résultant de la Convention Internationale en date du 18 Mars 1885.

Les dites obligations, ainsi que celles des Dettes Privilégiée et Unifiée, sont, en outre, garanties de la manière résultant des Articles 30 à 43 de la présente Loi.

10. Les Emprunts Domanial et Daïra Sanieh continueront à être réglés par les dispositions des Conventions, Lois, et Décrets antérieurs, en tant qu'elles ne sont pas expressément abrogées ou modifiées par la présente Loi. Les dispositions du Titre III de la présente Loi leur seront en outre applicables.

Titre II. Des Dettes Garantie, Privilégiée, et Unifiée.

Composition de la Commission de la Dette Publique.

11. La Commission de la Dette Publique, instituée par Décret du 2 mai 1876, reste chargée du service des intérêts et de l'amortissement des Dettes Garantie, Privilégiée, et Unifiée, dans les conditions édictées par la présente Loi.

12. Cette Commission est permanente jusqu'à l'entier amortissement ou remboursement de ces dettes.

13. Elle est composée de six Commissaires étrangers: un Allemand, un Anglais, un Autrichien, un Français, un Italien, et un Russe.

14. Les Commissaires sont nommés, comme fonctionnaires Egyptiens, par Décret Khédivial, après avoir été indiqués par leurs Gouvernements respectifs, sur la demande du Gouvernement Egyptien, comme aptes à remplir leurs fonctions.

15. Ils ne pourront être relevés de leurs fonctions sans le consentement de leurs Gouvernements respectifs.

16. Ils ne peuvent accepter d'autres fonctions en Egypte.

17. Ils siégent au Caire.

18. Ils pourront confier à l'un d'eux les fonctions de Président, lequel en donnera avis au Ministre des Finances.

Attributions administratives de la Commission.

19. La Caisse de la Dette reçoit les fonds destinés au service des intérêts et de l'amortissement des Dettes Garantie, Privilégiée, et Unifiée, et fait l'emploi de ce fonds conformément aux dispositions de la présente Loi.

20. La Commission de la Dette nomme et révoque les employés de la Caisse de la Dette.

21. Elle règle les rapports entre la Caisse et ses correspondants.

22. Les dépenses de personnel et de matériel de la Caisse, les commissions et allocations diverses de ses correspondants, les frais de change, assurances, transports d'espèces, et généralement toutes dépenses nécessaires pour l'exécution des services des Dettes Garantie, Privilégiée, et Unifiée seront imputées sur les revenus affectés en vertu de l'Article 30, et feront annuellement l'object d'un budget arrêté par la Commission de la Dette, lequel devra pour toute somme dépassant £ E. 35,000 être approuvé par le Conseil des Ministres.

23. Toutes sommes se trouvant entre les mains de la Commission de la Dette en exécution de la présente Loi pourront, jusqu'au jour de leur emploi, être placées en titres de la Dette Egyptienne.

Elles pourront, en outre, être placées à intérêt de toute manière déterminée d'un accord commun par la Commission de la Dette et le Ministre des Finances.

24. En cas de placement en Egypte, contre dépôt de titres, les dispositions de la loi générale Egyptienne en matière de gage, tant au point de vue de la date certaine que de l'exécution, ne seront pas opposables à la Commission de la Dette en ce qui concerne les titres déposés.

En conséquence, dans tous les cas prévus dans les contrats de gage, la Commission de la Dette pourra procéder à la vente de tout ou partie des titres engagés, sans aucune formalité judiciaire ou extrajudiciaire et nonobstant toutes saisies, défenses ou oppositions de la part tant des propriétaires que des tiers.

25. Les bénéfices produits par les placements prévus à l'Article 23

s'ajouteront, faute de disposition contraire, aux fonds entre les mains de la Commission destinée au service des intérêts des dettes ci-dessus.

26. Sauf les dispositions des Articles précédents, la Commission de la Dette ne pourra employer aucun fonds, disponible ou non, en opérations de crédit, de commerce, d'industrie, ou autres.

27. La Caisse est dotée d'une somme de £ E. 1,800,000, pour servir comme fonds de réserve, et d'une somme de £ E. 500,000 à titre de fonds de roulement.

28. Les décisions de la Commission de la Dette sont prises à la majorité absolue des membres qui la composent.

29. Annuellement, la Commission de la Dette publiera un Rapport sur ses opérations et soumettra son compte de gestion à l'autorité qui sera chargée de juger les comptes des Administrations Publiques.

Service et Garanties des Dettes Garantie, Privilégiée, et Unifiée.

30. Le produit brut des impôts fonciers (non compris l'impôt sur les dattiers) dans toutes les provinces d'Egypte, à l'exception de Keneh, et sous réserve des dispositions de l'Article 63, est affecté au service des Dettes Garantie, Privilégiée, et Unifiée. Aussitôt que les sommes provenant de ce chef dans l'année seront suffisantes pour parfaire au service de la Dette, y compris les dépenses de la Caisse, tout excédent sera versé directement au Ministère des Finances. Il est constaté qu'à la date du présent Décret les dits impôts produisent £ E. 4,200,000, et que le service de la Dette, y compris les dépenses de la Caisse, exige annuellement une somme d'environ £ E. 3,600,000.

31. A cet effet les comptables supérieurs de ces provinces sont tenus de verser à la Caisse de la Dette le produit brut des impôts fonciers jusqu'à ce que les versements atteignent la somme nécessaire pour parfaire chaque année à l'annuité affectée au service de la Dette Garantie, ainsi qu'aux intérêts sur les Dettes Privilégiée et Unifiée et aux dépenses budgétaires de la Caisse, et jusqu'à ce que cette obligation soit remplie ils ne seront libérés que par les quittances de la Commission de la Dette.

32. Les dits comptables sont tenus de fournir directement à la Commission de la Dette des relevés mensuels faisant connaître:

Les droits constatés des échéances de l'impôt foncier de l'année courante et les arriérés dus sur les années antérieures;

Les recouvrements et les dégrèvements;

Les versements effectués à la Caisse de la Dette;

Les restes en caisse au dernier jour du mois.

33. Est affectée au service de la Dette Garantie une annuité fixe de £ E. 307,125 (315,000 l.), qui sera prélevée comme première charge sur toutes les sommes affectées au service des Dettes Garantie, Privilégiée, et Unifiée.

La portion de cette annuité qui ne serait pas absorbée par le service de l'intérêt sera affectée à l'amortissement de la Dette Garantie.

34. Le service des intérêts de la Dette Privilégiée sera prélevé comme seconde charge sur les revenus affectés, et ensuite viendra comme troisième charge le service des intérêts de la Dette Unifiée.

35. En cas d'insuffisance des revenus affectés, la Commission de la Dette recourra, pour assurer le service des Dettes Garantie, Privilégiée, et Unifiée, au fonds de réserve, en observant les priorités ci-dessus et à charge de reconstituer entièrement ce fonds au moyen des premiers revenus reçus par elle qui resteraient disponibles.

Subsidiairement, le service des Dettes Garantie, Privilégiée, et Unifiée sera assuré par les ressources générales du Trésor.

36. Le Gouvernement ne pourra, sans l'assentiment des Puissances, apporter aux impôts fonciers dans les provinces mentionnées à l'Article 30 des modifications de nature à réduire leur rendement annuel au-dessous de £ E. 4,000,000.

37. Les Commissaires de la Dette auront, même individuellement, qualité pour poursuivre devant les Tribunaux Mixtes, comme représentants légaux des porteurs des titres, l'Administration Financière représentée par le Ministre des Finances, pour l'inexécution de toute obligation qui incombe au Gouvernement en vertu de la présente Loi à l'égard de tout ce qui concerne le service des Dettes Garantie, Privilégiée, et Unifiée.

Amortissement et Remboursement.

38. Aucune partie des Dettes Garantie, Privilégiée, et Unifiée ne pourra être remboursée avant les dates indiquées à l'Article suivant, sous réserve, en ce qui concerne la Dette Garantie, des dispositions de l'Article 33.

39. A partir du 15 juillet 1910, le Gouvernement aura pleine liberté à rembourser au pair les Dettes Garantie et Privilégiée, soit à une même époque, soit à des époques différentes. Il en sera de même pour la Dette Unifiée à partir du 15 juillet 1912.

40. A partir de la même date, il sera loisible au Gouvernement de verser à la Caisse de la Dette toute somme dont il pourrait disposer, pour être employée à l'amortissement de l'une quelconque de ces dettes.

41. Tout amortissement prévu à l'Article 33 ou à l'Article 40, se fera par les soins de la Commission de la Dette.

Lorsque le cours du marché est au-dessous du pair, il se fera par rachats au cours du marché. Dans le cas contraire il s'effectuera au pair par voie de tirage.

42. Les tirages s'effectueront en séance publique; dans le cas d'amortissement en vertu de l'Article 40 avis en sera donné au „Journal Officiel“ deux mois d'avance.

43. Le remboursement des titres sortant au tirage aura lieu à partir de l'échéance du coupon suivant.

Titre III. Des Dettes Domaniale et Daïre Sanieh.

Dette Domaniale.

44. Toute insuffisance des revenus des Domaines pour parfaire au service du coupon sera comblée par le Ministre des Finances dans les conditions prescrites par les Conventions passées entre le Gouvernement et MM. de Rothschild.

45. Seront employés à l'amortissement de la Dette Domaniale:

a) Le produit des ventes des propriétés des Domaines;

b) Les excédents des revenus nets des Domaines après paiement des coupons au taux actuel et des impôts fonciers dus au Gouvernement

Aucun autre mode d'amortissement n'est admis.

46. Lorsque le cours du marché est au-dessous du pair, l'amortissement se fera par rachats au cours du marché. Dans le cas contraire il s'effectuera au pair par voie de tirage.

47. Sauf l'amortissement prévu à l'Article 45 la Dette Domaniale ne pourra être remboursée avant le 1er janvier 1915. A partir de cette date, elle sera remboursable au pair.

48. Les ventes des propriétés des Domaines pourront être consenties moitié au comptant, moitié par annuités portant intérêt à 4·25 pour cent, et dont le nombre ne pourra excéder quinze.

49. Les porteurs des anciennes obligations domaniales hypothécaires d'Égypte 5 pour cent seront déchus, quinze ans après la date de la promulgation du Décret du 25 mars 1893 relatif à la conversion de ces obligations, du droit de réclamer les sommes ou les titres nouveaux qui pourront leur avoir été dus par suite du remboursement ou de la conversion de leurs anciens titres.

Tout somme devenant disponible par suite de cette prescription sera considérée comme faisant partie des revenus annuels des Domaines; tout titre nouveau sera dans les mêmes conditions, annulé.

Dette Daïra Sanieh.

50. Les dispositions des Articles 45 et 46 seront applicables à la Dette Daïra Sanieh.

51. Sous réserve des dispositions ci-dessus relatives à l'amortissement, la Dette Daïra Sanieh ne pourra être remboursée avant le 15 octobre 1905. A partir de cette date elle sera remboursable au pair.

Titre IV. Dispositions Diverses.

Transfert du Fonds de Réserve et des Économies de Conversion, &c.

52. Les titres de la Dette Publique et les sommes en espèces actuellement déposés à la Caisse et représentant le fonds de réserve constitué conformément au Décret du 12 juillet, 1888, et les économies réalisées

par suite des conversions des anciennes Dettes Privilégiée, Domaniale, et Daïra Sanieh, conformément au Décret du 6 juin 1890, sont entièrement libérés de leur affectation actuelle et seront versés au Ministère des Finances, déduction faite d'une somme suffisante pour parfaire au fonds de réserve et au fonds de roulement prévus à l'Article 27 du présent Décret.

53. Seront également versés au Ministère des Finances tous les autres fonds actuellement entre les mains de la Commission de la Dette, sous réserve des dispositions de l'Article 56.

Dans l'application du présent Article et du précédent, les titres retenus par la Caisse de la Dette entreront en compte au pair.

Liquidation de 1880.

54. Toute condamnation judiciaire, résultant d'une réclamation contre le Gouvernement à raison de droits acquis antérieurement au 1er janvier 1880 constatés avant le 1er janvier 1886 soit par une instance engagée devant les Tribunaux, soit par un accusé de réception émanant d'une Administration compétente, soit par un acte d'huissier, sera payée intégralement en espèces.

55. Le montant de ces condamnations sera prélevé, jusqu'à épuisement complet, sur la somme de 50,000 l. actuellement en dépôt à la Caisse de la Dette en titres de la Dette Privilégiée et représentant le solde de l'actif de la liquidation de 1880. En cas d'insuffisance de cette somme, ces condamnations seront payées par le Gouvernement.

56. La somme de 50,000 l. ci-dessus continuera en dépôt à la Caisse de la Dette pour satisfaire aux condamnations résultant des réclamations en suspens.

57. Le montant des coupons des titres qui le représentent s'ajouteront aux fonds entre les mains de la Commission de la Dette affectés au service des Dette Garantie, Privilégiée, et Unifiée.

Tout excédent, après satisfaction des réclamations en suspens, sera versé au Ministère des Finances.

Moukabalah.

58. Sont maintenues, jusqu'au 30 juin 1930 et suivant la répartition déjà faite, les annuités, s'élevant à la somme de £ E. 150,000 par an, actuellement admises en diminution des impôts fonciers sur les terrains, à l'égard desquels la Moukabalah a été payée antérieurement à l'année 1880.

59. Continueront à être tenus, à cet effet, les registres établis dans les villages, où sont consignés des comptes ouverts à chaque ayant droit, avec indication des annuités successives et désignation détaillée par lieux dits, contenances et quotes-parts d'impôts des terres auxquelles les annuités sont applicables.

60. Chaque année, les annuités seront inscrites sur les wirds ou extraits de rôles des contribuables en diminution de leurs impôts fonciers.

61. A chaque mutation de taklif, la portion des annuités correspondant à la portion des terres aliénées sera distraite, sur le registre, du compte de l'ancien propriétaire et reportée au compte du nouveau.

Il sera délivré au nouveau propriétaire, par les soins du Moudir, un certificat énonçant le montant des annuités pour lesquelles il se trouvera inscrit sur le registre du village.

Note en sera faite sur le certificat de l'ancien propriétaire ou ce certificat sera retiré, suivant le cas.

62. Lors de l'exécution du cadastre l'évaluation des terres et la répartition de l'impôt seront faites sans tenir compte des annuités ci-dessus.

63. Les annuités prévues au présent chapitre seront considérées comme une réduction de l'impôt foncier aux fins des Articles 30, 31, et 36 de la présente Loi.

Prescriptions.

64. La prescription quinquenniale et la prescription de quinze ans établies par les Articles 275 et 272 du Code Civil et déclarées applicables aux Dettes Unifiée et Privilégiée par le Décret du 17 juillet 1880 continueront à être applicables, la première aux intérêts des obligations des Dettes Garantie, Privilégiée, et Unifiée, la seconde aux capitaux des mêmes obligations désignées par le tirage pour l'amortissement.

Les délais de prescription seront calculés d'après le calendrier Grégorien.

Le montant des intérêts et capitaux atteints par la prescription s'ajoutera aux fonds entre les mains de la Commission de la Dette affectés au service des dettes ci-dessus.

65. Les porteurs des titres des anciennes Dettes Privilégiée et Daïra Sanieh seront déchus, quinze ans après le date de la promulgation des Décrets du 7 juin 1890, ou du 5 juillet 1890, suivant le cas, relatifs à la conversion de ces dettes, du droit de réclamer les sommes ou les titres nouveaux qui pourront leur avoir été dus par suite du remboursement ou de la conversion de leurs anciens titres.

Toute somme ainsi que tout titre devenant disponible par suite de ces prescriptions seront versés au Ministère des Finances.

Abrogations.

66. Sont et demeureront abrogés, sous réserve des dispositions du second alinéa du présent Article, les Décrets mentionnés à la première Annexe à la présente Loi, ainsi que les Articles de Décrets mentionnés à la seconde Annexe.

Néanmoins, aucune de ces abrogations n'aura pour effet:

(1.) De faire renaître à l'encontre du Gouvernement aucune action qui avait été annulée par l'un des Décrets ci-dessus mentionnés ou qui, immédiatement avant l'entrée en vigueur de la présente Loi, serait prescrite ou périmée;

(2.) De rendre aucune juridiction compétente pour connaître d'une réclamation dont, immédiatement avant l'entrée en vigueur de la présente Loi, elle était incompétente pour connaître.

(3.) De remettre en vigueur aucune disposition antérieure de la Loi abrogée par l'un des dits Décrets;

(4.) D'interrompre aucune prescription.

Entrée en vigueur et Exécution.

67. La présente Loi entrera en vigueur trente jours après sa promulgation au „Journal Officiel".

68. Nos Ministres sont chargés, chacun en ce qui le concerne, de l'exécution de la présente Loi.

Sub-Annex I.

Liste de Décrets abrogés.

Date du Décret	Objet
Le 6 avril 1876	Suspension de paiement de bons et assignations.
Le 2 mai 1876	Instituant la Caisse de la Dette.
Le 7 mai 1876	Unification de la Dette.
Le 25 mai 1876	Règlement d'exécution du Décret du 7 mai 1876.
Le 18 novembre 1876	Conversion de la Dette.
Le 6 décembre 1876	Règlement d'exécution du Décret du 18 novembre 1876.
Le 15 décembre 1877	Modification des époques du service de la Dette Unifiée.
Le 30 mars 1879	Suspension du service de l'Emprunt 1864.
Le 22 avril 1879	Règlement des dettes du Gouvernement.
Le 25 décembre 1879	Composition du Conseil d'Administration des Chemins de Fer.
Le 3 mars 1880	Suspension de l'amortissement de l'Emprunt 1864.
Le 31 mars 1880	Instituant une Commission de Liquidation.
Le 26 avril 1880	Paiement à 4 pour cent du coupon du 1er mai 1880 de la dette Unifiée.
Le 11 mai 1880	Suspension du service de l'Emprunt 1867.
Le 6 juillet 1880	Suspension du service de l'Emprunt 1865—66.
Le 12 avril 1885	Retenue de 5 pour cent sur les coupons de la Dette jusqu'au 1er juin 1885.
Le 27 juillet 1885	Emprunt Garanti.
Le 28 juillet 1885	Émission de l'Emprunt Garanti.
Le 22 juin 1886	Emploi des sommes provenant de l'Emprunt Garanti.
Le 22 juin 1886	Irrecevabilité de l'opposition au paiement des coupons et au remboursement des titres de la dette.
Le 12 avril 1887	Paiement des coupons des Dettes Privilégiée et Unifiée à Berlin en or.

Date du Décret	Objet
Le 14 juillet 1887	Autorisant les Commissaires de la dette à fixer le change des paiements de la Dette à Paris et à Berlin.
Le 26 janvier 1888	Augmentation des dépenses administratives.
Le 2 avril 1888	Augmentation des dépenses administratives pour le service de la Corvée.
Le 30 avril 1888	Emprunt de £ E. 2,000,000.
Le 12 juillet 1888	Constitution d'un fonds de réserve de £ E. 2,000,000.
Le 14 juin 1889	Augmentation des dépenses administratives pour le service de la Corvée.
Le 19 décembre 1889	Suppression de la Corvée.
Le 2 juin 1890	Modification de la date à laquelle sera arrêté le compte des excédents des Revenus Affectés.
Le 6 juin 1890	Conversion des Dettes Privilégiée, Domaniale, et Daïre Sanieh.
Le 7 juin 1890	Exécution de la conversion de la Dette Privilégiée.
Le 5 juillet 1890	Exécution de la conversion de la Dette de la Daïra Sanieh.
Le 8 novembre 1890	Dates du remboursement des Dette Privilégiée et Daïra Senieh.
Le 13 janvier 1891	Clôture des opérations de la conversion de la Dette Privilégiée.
Le 8 décembre 1891	Augmentation des dépenses administratives pour l'assainissement de la ville du Caire.
Le 18 mars 1893	Fixant à $4^1/_4$ pour cent le taux de la nouvelle Dette Domaniale.
Le 25 mars 1893	Exécution de la conversion de la Dette Domaniale.
Le 29 mai 1893	Date du remboursement de la Dette Domaniale.
Le 10 février 1894	Prélèvement annuel de £ E. 5,000 sur le droit d'abatage.
Le 10 décembre 1894	Affectation du droit de bacs sur les canaux.
Le 15 mai 1895	Modification de l'Article 35 du Décret du 17 juillet 1880. Budget de la Commission de la Dette.
Le 26 novembre 1898	Réduction de l'impôt foncier.
Le 13 novembre 1899	Procédure pour les décisions de la Caisse de la Dette.
Le 20 janvier 1900	Emploi des économies — remboursement et amortissement de la Dette Domaniale.
Le 12 juillet 1900	Emprunt de £ E. 1,700,000.
Le 21 mai 1902	Augmentation du budget des dépenses des chemins de fer.

Sub-Annex II.

Liste de Décrets abrogés en partie.

Date du Décret	Objet	Partie abrogée
Le 6 janvier 1880	Portant abrogation de la Moukabalah	Les Articles 3, 4.
Le 17 juillet 1880	Loi de Liquidation	Les Articles 1-39, 63-98.
Le 8 mars 1891	Loi sur les Patentes	L'Article 1, 2°, les Article 2-29.
Le 26 décembre 1891	Rattachant au Gouvernorat d'Alexandrie le service des Contributions	L'Article 4.
Le 28 janvier 1892	Portant suppression de la corvée, etc.	Les Articles 2, 3, 4, 6, 7.
Le 25 décembre 1894	Portant prélèvement annuel de £ E. 40,000 sur les droits de phare, etc.	L'Article 7.

Inclosure 2.

Convention signed at London, April 8, 1904.

His Majesty the King of the United Kingdom of Great Britain aud Ireland and of the British Dominions beyond the Seas, Emperor of India, and the President of the French Republic, having resolved to put an end, by a friendly Arrangement, to the difficulties which have arisen in Newfoundland, have decided to conclude a Convention to that effect, and have named as their respective Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, the Most Honourable Henry Charles Keith Petty-Fitzmaurice, Marquess of Lansdowne, His Majesty's Principal Secretary of State for Foreign Affairs; and

Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes, et le Président de la République Française, ayant résolu de mettre fin, par un arrangement amiable, aux difficultés survenues à Terre-Neuve, ont décidé de conclure une convention à cet effet, et ont nommé pour leurs Plénipotentiaires respectifs:

Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes, le Très Honorable Henry Charles Keith Petty-Fitzmaurice, Marquis de Lansdowne, Principal Secrétaire d'État de Sa Majesté au Département des Affaires Étrangères; et

The President of the French Republic, his Excellency Monsieur Paul Cambon, Ambassador of the French Republic at the Court of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India;

Who, after having communicated to each other their full powers, found in good and due form, have agreed as follows, subject to the approval of their respective Parliaments:

Article I.

France renounces the privileges established to her advantage by Article XIII of the Treaty of Utrecht, and confirmed or modified by subsequent provisions.

Article II.

France retains for her citizins, on a footing of equality with British subjects, the right of fishing in the territorial waters on that portion of the coast of Newfoundland comprised between Cape St. John and Cape Ray, passing by the north; this right shall be exercised during the usual fishing season closing for all persons on the 20th October of each year.

The French may therefore fish there for every kind of fish, including bait and also shell fish. They may enter any port or harbour on the said coast and may there obtain supplies or bait and shelter on the same conditions as the inhabitants of Newfoundland, but they will remain subject to the local Regulations in force; they may also fish at the mouths of the rivers, but without going beyond a straight line drawn between the two extremities of the banks, where the river enters the sea.

Le Président de la République Française, son Excellence Monsieur Paul Cambon, Ambassadeur de la République Française près Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes;

Lesquels, après s'être cemmuniqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit, sous réserve de l'approbation de leurs Parlements respectifs:

Article I.

La France renonce aux privilèges établis à son profit par l'Article XIII du Traité d'Utrecht, et confirmés ou modifiés par des dispositions postérieures.

Article II.

La France conserve pour ses ressortissants, sur le pied d'égalité avec les sujets Britanniques, le droit de pêche dans les eaux territoriales sur la partie de la côte de Terre-Neuve comprise entre le Cap Saint-Jean et le Cap Raye en passant par le nord; ce droit s'exercera pendant la saison habituelle de pêche finissant pour tout le monde le 20 Octobre de chaque année.

Les Français pourront donc y pêcher toute espèce de poisson, y compris la boëtte, ainsi que le crustacés. Ils pourront entrer dans tout port ou havre de cette côte et s'y procurer des approvisionnements ou de la boëtte et s'y abriter dans les mêmes conditions que les habitants de Terre-Neuve, en restant soumis aux Règlements locaux en vigueur; ils pourront aussi pêcher à l'embouchure des rivières, sans toutefois pouvoir dépasser une ligne droite qui serait tirée de l'un à l'autre des points extrêmes du rivage entre lesquels la rivière se jette dans la mer.

They shall not make use of stake-nets or fixed engines without permission of the local authorities.

On the above-mentioned portion of the coast, British subjects and French citizens shall be subject alike to the laws and Regulations now in force, or which may hereafter be passed for the establishment of a close time in regard to any particular kind of fish, or for the improvement of the fisheries. Notice of any fresh laws or Regulations shall be given to the Government of the French Republic three months before they come into operation.

The policing of the fishing on the above-mentioned portion of the coast, and for prevention of illicit liquor traffic and smuggling of spirits, shall form the subject of Regulations drawn up in agreement by the two Governments.

Article III.

A pecuniary indemnity shall be awarded by His Britannic Majesty's Government to the French citizens engaged in fishing or the preparation of fish on the "Treaty Shore," who are obliged, either to abandon the establishments they possess there, or to give up their occupation, in consequence of the modification introduced by the present Convention into the existing state of affairs.

This indemnity cannot be claimed by the parties interested unless they have been engaged in their business prior to the closing of the fishing season of 1903.

Claims for indemnity shall be submitted to an Arbitral Tribunal, composed of an officer of each nation,

Ils drevront s'abstenir de faire usage d'engins de pêche fixes ("stake-nets and fixed engines") sans la permission des autorités locales.

Sur la partie de la côte mentionnée ci dessus, les Anglais et les Français seront soumis sur le pied d'égalité aux Lois et Règlements actuellement en vigueur ou qui seraient édictés, dans la suite, pour la prohibitation, pendant un temps déterminé, de la pêche de certains poissons ou pour l'amélioration des pêcheries. Il sera donné connaissance au Gouvernement de la République Française des Lois et Règlements nouveaux, trois mois avant l'époque où ceux-ci devront être appliqués.

La police de la pêche sur la partie de la côte susmentionnée, ainsi que celle du trafic illicite des liqueurs et de la contrebande des alcools, feront l'objet d'un Règlement établi d'accord entre les deux Gouvernements.

Article III.

Une indemnité pécuniaire sera allouée par le Gouvernement de Sa Majesté Britannique aux citoyens Français se livrant à la pêche ou à la préparation du poisson sur le "Treaty Shore," qui seront obligés soit d'abandonner les établissements qu'ils y possèdent, soit de renoncer à leur industrie, par suite de la modification apportée par la présente Convention à l'état de choses actuel.

Cette indemnité ne pourra être réclamée par les intéressés que s'ils ont exercé leur profession antérieurement à la clôture de la saison de pêche de 1903.

Les demandes d'indemnité seront soumises à un Tribunal Arbitral composé d'un officier de chaque nation,

and, in the event of disagreement, of an Umpire appointed in accordance with the procedure laid down by Article XXXII of The Hague Convention. The details regulating the constitution of the Tribunal and the conditions of the inquiries to be instituted for the purpose of substantiating the claims, shall form the subject of a special Agreement between the two Governments.

et en cas de désaccord d'un sur-arbitre désigné suivant la procédure, instituée par l'Article XXXII de la Convention de la Haye. Les détails réglant la constitution du Tribunal et les conditions des enquêtes à ouvrir pour mettre les demandes en état feront l'objet d'un Arrangement spécial entre les deux Gouvernements.

Article IV.

His Britannic Majesty's Government, recognizing that, in addition to the indemnity referred to in the preceding Article, some territorial compensation is due to France in return for the surrender of her privilege in that part of the Island of Newfoundland referred to in Article II, agree with the Government of the French Republic to the provisions embodied in the following Articles:

Article IV.

Le Gouvernement de Sa Majesté Britannique, reconnaissant qu'en outre de l'indemnité mentionnée dans l'Article précédent, une compensation territoriale est due à la France pour l'abandon de son privilège sur la partie de l'Ile de Terre-Neuve visée à l'Article II, convient avec le Gouvernement de la République Française des dispositions qui font l'objet des Articles suivants:

Article V.

The present frontier between Senegambia and the English Colony of the Gambia shall be modified so as to give to France Yarbutenda and the lands and landing places belonging to that locality.

In the event of the river not being open to maritime navigation up to that point, access shall be assured to the French Government at a point lower down on the River Gambia, which shall be recognized by mutual agreement as being accessible to merchant ships engaged in maritime navigation.

The conditions which shall govern transit on the River Gambia and its tributaries, as well as the method of access to the point that may be reserved to France in accordance with the pre-

Article V.

La frontière existant entre la Sénégambie et la Colonie Anglaise de la Gambie sera modifiée de manière à assurer à la France la possession de Yarboutenda et des terrains et points d'atterrissement appartenant à cette localité.

Au cas où la navigation maritime ne pourrait s'exercer jusque-là, un accès sera assuré en aval au Gouvernement Français sur un point de la Rivière Gambie qui sera reconnu d'un commun accord comme étant accessible aux bâtiments marchands se livrant à la navigation maritime.

Les conditions dans lesquelles seront réglés le transit sur la Rivière Gambie et ses affluents, ainsi que le mode d'accès au point qui viendrait à être réservé à la France, en exécution du

ceding paragraph, shall form the subject of future agreement between the two Governments.

In any case, it is understood that these conditions shall be at least as favourable as those of the system instituted by application of the General Act of the African Conference of the 26th February, 1885,*) and of the Anglo-French Convention of the 14th June, 1898,**) to the English portion of the basin of the Niger.

Article VI.

The group known as the Iles de Los and situated opposite Konakry, is ceded by His Britannic Majesty to France.

Article VII.

Persons born in the territories ceded to France by Articles V and VI of the present Convention may retain British nationality by means of an individual declaration to that effect, to be made before the proper authorities by themselves, or, in the case of children under age, by their parents or guardians.

The period within which the declaration of option referred to in the preceding paragraph must be made, shall be one year, dating from the day on which French authority shall be established over the territory in which the persons in question have been born.

Native laws and customs now existing will, as far as possible, remain undisturbed.

In the Iles de Los, for a period of thirty years from the date of exchange of the ratifications of the present Convention, British fishermen shall enjoy the same rights as French fishermen with regard to anchorage

paragraphe précédent, feront l'objet d'arrangements à concerter entre les deux Gouvernements.

Il est, dans tous les cas, entendu que ces conditions seront au moins aussi favorables que celles du régime institué par application de l'Acte Général de la Conférence Africaine du 26 février 1885,*) et de la Convention Franco-Anglaise du 14 Juin, 1898,**) dans la partie Anglaise du bassin du Niger.

Article VI.

Le groupe désigné sour le nom d'Iles de Los et situé en face de Konakry, est cédé par Sa Majesté Britannique à la France.

Article VII.

Les personnes nées sur les territoires cédés à la France par les Articles V et VI de la présente Convention pourront conserver la nationalité Britannique moyennant une déclaration individuelle faite à cet effet devant l'autorité compétente par elles-mêmes, ou, dans le cas d'enfants mineurs, parleurs parents ou tuteurs.

Le délai dans lequel devra se faire la déclaration d'option prévue au paragraphe précédent sera d'un an à dater du jour de l'installation de l'autorité Française sur le territoire où seront nées les dites personnes.

Les lois et coutumes indigènes actuellement en vigueur seront respectées autant que possible.

Aux Iles de Los, et pendant une période de trente années à partir de l'échange des ratifications de la présente Convention, les pêcheurs Anglais bénéficieront en ce qui concerne le droit d'ancrage par tous les temps,

*) V. **N. R. G.** 2e s. X. 414.

) V. **N. R. G. 2e s. XXIX. 116.

in all weathers, to taking in provisions and water, to making repairs, to transhipment of goods, to the sale of fish, and to the landing and drying of nets, provided always that they observe the conditions laid down in the French Laws and Regulations which may be in force there.

d'approvisionnement et d'aiguade, de réparation, de transbordement de marchandises, de vente de poisson, de descente à terre et de séchage des filets, du même régime que les pêcheurs Français, sous réserve, toutefois, par eux de l'observation des prescriptions édictées dans les Lois et Règlements Français qui y seront en vigueur.

Article VIII.

To the east of the Niger the following line shall be substituted for the boundary fixed between the French and British possessions by the Convention of the 14th June, 1898, subject to the modifications which may result from the stipulations introduced in the final paragraph of the present Article.

Starting from the point on the left bank of the Niger laid down in Article III of the Convention of the 14th June, 1898, that is to say, the median line of the Dallul Mauri, the frontier shall be drawn along this median line until it meets the circumference of a circle drawn from the town of Sokoto as a centre, with a radius of 160,932 mètres (100 miles). Thence it shall follow the northern arc of this circle to a point situated 5 kilomètres south of the point of intersection of the abovementioned arc of the circle with the route from Dosso to Matankari viâ Maourédé.

Thence it shall be drawn in a direct line to a point 20 kilomètres north of Konni (Birni-N'Kouni), and then in a direct line to a point 15 kilomètres south of Maradi, and thence shall be continued in a direct line to the point of intersection of the parallel of 13° 20′ north lati-

Article VIII.

A l'est du Niger, et sous réserve des modifications que pourront y comporter les stipulations insérées au dernier paragraphe du présent Article, le tracé suivant sera substitué à la délimitation établie entre les possessions Françaises et Anglaises par la Convention du 14 juin 1898: —

Partant du point sur la rive gauche du Niger indiqué à l'Article III de la Convention du 14 juin 1898, c'est-à-dire, la ligne médiane du Dallul-Maouri, la frontière suivra cette ligne médiane jusqu'à sa rencontre avec la circonférence d'un cercle décrit du centre de la ville de Sokoto avec un rayon de 160,932 mètres (100 milles). De ce point, elle suivra l'arc septentrional de ce cercle jusqu'à un point situé à 5 kilomètres au sud du point d'intersection avec le dit arc de cercle de la route de Dosso à Matankari par Maourédé.

Elle gagnera de là, en ligne droite, un point situé à 20 kilomètres au nord de Konni (Birni-N'Kouni), puis de là, également en ligne droite, un point situé à 15 kilomètres au sud de Maradi, et rejoindra ensuite directement l'intersection du parallèle 13° 20′ de latitude nord avec un

tude with a meridian passing 70 miles to the east of the second intersection of the 14th degree of north latitude and the northern arc of the above-mentioned circle.

Thence the frontier shall follow in an easterly direction the parallel of 13° 20′ north latitude until it strikes the left bank of the River Komadugu Waubé (Komadougou Ouobé), the thalweg of which it will then follow to Lake Chad. But, if before meeting this river the frontier attains a distance of 5 kilomètres from the caravan route from Zinder to Yo, through Sua Kololua (Soua Kololoua), Adeber, and Kabi, the boundary shall then be traced at a distance of 5 kilomètres to the south of this route until it strikes the left bank of the River Komadugu Waubé (Komadougu Ouobé), it being nevertheless understood that, if the boundary thus drawn should happen to pass through a village, this village, with its lands, shall be assigned to the Government to which would fall the larger portion of the village and its lands. The boundary will then, as before, follow the thalweg of the said river to Lake Chad.

Thence it will follow the degree of latitude passing through the thalweg of the mouth of the said river up to its intersection with the meridian running 35′ east of the centre of the town of Kouka, and will then follow this meridian southwards until it intersects the southern shore of Lake Chad.

It is agreed, however, that, when the Commissioners of the two Governments at present engaged in delimiting the line laid down in Article IV of the Convention of the 14th Juni, 1898, return home and

méridien passant à 70 milles à l'est de le seconde intersection du 14e degré de latitude nord avec l'arc septentrional précité.

De là, frontière suivra, vers l'est, le parallèle 13° 20′ de latitude nord jusqu'à sa rencontre avec la rive gauche de la Rivière Komadougou Ouobé (Komadugu Waube), dont elle suivra le thalweg jusqu'au Lac Tchad. Mais si, avant de rencontrer cette rivière, la frontière arrive à une distance de 5 kilomètres de la route de caravane de Zinder à Yo, par Soua Kololoua (Sua Kololua), Adeber, et Kabi, la frontière sera tracée à une distance de 5 kilomètres au sud de cette route jusqu'à sa rencontre avec la rive gauche de la Rivière Komadougou Ouobé (Komadugu Waube), étant toutefois entendu que si la frontière ainsi tracée venait à traverser un village, ce village, avec ses terrains, serait attribué au Gouvernement auquel se rattacherait la partie majeure du village et de ses terrains. Elle suivra ensuite, comme ci-dessus, le thalweg jusqu'au Lac Tchad.

De là elle suivra le degré de latitude passant par le thalweg de l'embouchure de la dite rivière jusqu'à son intersection avec le méridien passant à 35′ est du centre de la ville de Kouka, puis ce méridien vers le sud jusqu'à son intersection avec la rive sud du Lac Tchad.

Il est convenu, cependant, que lorsque les Commissaires des deux Gouvernements qui procèdent en ce moment à la délimitation de la ligne établie dans l'Article IV de la Convention du 14 juin 1898, seront re-

can be consulted, the two Governments will be prepared to consider any modifications of the above frontier line which may seem desirable for the purpose of determining the line of demarcation with greater accuracy. In order to avoid the inconvenience to either party which might result from the adoption of a line deviating from recognized and well-established frontiers, it is agreed that in those portions of the projected line where the frontier is not determined by the trade routes, regard shall be had to the present political divisions of the territories so that the tribes belonging to the territories of Tessaoua-Maradi and Zinder shall, as far as possible, be left to France, and those belonging to the territories of the British zone shall, as far as possible, be left to Great Britain.

It is further agreed that, on Lake Chad, the frontier line shall, if necessary, be modified so as to assure to France a communication through open water at all seasons between her possessions on the north-west and those on the south-east of the Lake, and a portion of the surface of the open waters of the Lake at least proportionate to that assigned to her by the map forming Annex 2 of the Convention of the 14th June, 1898.

In that portion of the River Komadugu which is common to both parties, the populations on the banks shall have equal rights of fishing.

Article IX.

The present Convention shall be ratified, and the ratifications shall be exchanged, at London, within eight months, or earlier if possible.

venus et pourront être consultés, les deux Gouvernements prendront en considération toute modification à la ligne-frontière ci-dessus qui semblerait désirable pour déterminer la ligne de démarcation avec plus de précision. Afin d'éviter les inconvénients qui pourraient résulter de part et d'autre d'un tracé qui s'écarterait des frontières reconnues et bien constatées, il est convenu que, dans la partie du tracé où la frontière n'est pas déterminée par les routes commerciales, il sera tenu compte des divisions politiques actuelles des territoires, de façon à ce que les tribus relevant des territoires de Tessaoua-Maradi et Zinder soient, autant que possible, laissées à la France, et celles relevant des territoires de la zone Anglaise soient, autant que possible, laissées à la Grande-Bretagne.

Il est en outre entendu que, sur le Tchad, la limite sera, s'il est besoin, modifiée de façon à assurer à la France une communication en eau libre en toute saison entre ses possessions du nord-ouest et du sud-est du Lac, et une partie de la superficie des eaux libres du Lac au moins proportionnelle à celle qui lui était attribuée par la carte formant l'Annexe No. 2 de la Convention du 14 juin 1898.

Dans la partie commune de la Rivière Komadugou, les populations riveraines auront égalité de droits pour la pêche.

Article IX.

La présente Convention sera ratifiée, et les ratifications en seront échangées, à Londres, dans le délai de huit mois, ou plus tôt si faire se peut.

In witness whereof his Excellency the Ambassador of the French Republic at the Court of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty's Principal Secretary of State for Foreign Affairs, duly authorized for that purpose, have signed the present Convention and have affixed thereto their seals.

Done at London, in duplicate, the 8th day of April 1904.

(L. S.) *Lansdowne.*

En foi de quoi son Excellence l'Ambassadeur de la République Française près Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes, et le Principal Secrétaire d'Etat pour les Affaires Étrangères de Sa Majesté Britannique, dûment autorisés à cet effet, ont signé la présente Convention et y ont apposé leurs cachets.

Fait à Londres, en douple expédition, le 8 avril 1904.

(L. S.) *Paul Cambon.*

Inclosure 3.

Declaration concerning Siam, Madagascar, and the New Hebrides.

I. Siam.

The Government of His Britannic Majesty and the Government of the French Republic confirm Articles 1 and 2 of the Declaration signed in London on the 15th January 1896,*) by the Marquess of Salisbury, then Her Britannic Majesty's Principal Secretary of State for Foreign Affairs, and Baron de Courcel, then Ambassador of the French Republic at the Court of Her Britannic Majesty.

In order, however, to complete these arrangements, they declare by mutual agreement that the influence of Great Britain shall be recognized by France in the territories situated to the west of the basin of the River Menam, and that the influence of France shall be recognized by Great Britain in the territories situated to the east of the same region, all the Siamese possessions on the east and

Déclaration concernant le Siam, Madagascar, et les Nouvelles-Hébrides.

I. Siam.

Le Gouvernement de Sa Majesté Britannique et le Gouvernement de la République Française maintiennent les Articles 1 et 2 de la Déclaration signée à Londres le 15 janvier 1896,*) par le Marquis de Salisbury, Principal Secrétaire d'Etat pour les Affaires Étrangères de Sa Majesté Britannique à cette époque, et le Baron de Courcel, Ambassadeur de la République Française près Sa Majesté Britannique à cette époque.

Toutefois, en vue de compléter ces dispositions, ils déclarent d'un commun accord que l'influence de la Grande-Bretagne sera reconnue par la France sur les territoires situés à l'ouest du bassin de la Meinam, et celle de la France sera reconnue par la Grande-Bretagne sur les territoires situés à l'est de la même région, toutes les possessions Siamoises

*) V. **N. R. G.** 2e s. XXIII. 226.

south-east of the zone above described and the adjacent islands coming thus henceforth under French influence, and, on the other hand, all Siamese possessions on the west of this zone and of the Gulf of Siam, including the Malay Peninsula and the adjacent islands, coming under English influence.

The two Contracting Parties, disclaiming all idea of annexing any Siamese territory, and determined to abstain from any act which might contravene the provisions of existing Treaties, agree that, with this reservation, and so far as either of them is concerned, the two Governments shall each have respectively liberty of action in their spheres of influence as above defined.

II. Madagascar.

In view of the Agreement now in negotiation on the questions of jurisdiction and the postal service in Zanzibar, and on the adjacent coast, His Britannic Majesty's Government withdraw the protest which they had raised against the introduction of the Customs Tariff established at Madagascar after the annexation of that island to France. The Government of the French Republic take note of this Declaration.

III. New Hebrides.

The two Governments agree to draw up in concert an Arrangement which, without involving any modification of the political status quo, shall put an end to the difficulties arising from the absence of jurisdiction over the natives of the New Hebrides.

They agree to appoint a Commission to settle the disputes of their respective nationals in the said islands

à l'est et au sud-est de la zone susvisée et les îles adjacentes relevant ainsi désormais de l'influence Française et, d'autre part, toutes les possessions Siamoises à l'ouest de cette zone et du Golfe de Siam, y compris la Péninsule Malaise et les îles adjacentes, relevant de l'influence Anglaise.

Les deux Parties Contractantes, écartant d'ailleurs toute idée d'annexion d'aucun territoire Siamois, et résolues à s'abstenir de tout acte qui irait à l'encontre des dispositions des Traités existants, conviennent que, sous cette réserve et en regard de l'un et de l'autre, l'action respective des deux Gouvernements s'exercera librement sur chacune des deux sphères d'influence ainsi définies.

II. Madagascar.

En vue de l'Accord en préparation sur les questions de juridiction et du service postal à Zanzibar, et sur la côte adjacente, le Gouvernement de Sa Majesté Britannique renonce à la réclamation qu'il avait formulée contre l'introduction du Tarif Douanier établi à Madagascar après l'annexion de cette île à la France. Le Gouvernement de la République Française prend acte de cette Déclaration.

III. Nouvelles-Hébrides.

Les deux Gouvernements conviennent de préparer de concert un Arrangement qui, sans impliquer aucune modification dans le status-quo politique, mette fin aux difficultés résultant de l'absence de juridiction sur les indigènes des Nouvelles-Hébrides.

Ils conviennent de nommer une Commission pour le règlement des différends fonciers de leurs ressor-

with regard to landed property. The competency of this Commission and its rules of procedure shall form the subject of a preliminary Agreement between the two Governments.

In witness whereof His Britannic Majesty's Principal Secretary of State for Foreign Affairs and his Excellency the Ambassador of the French Republic at the Court of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, duly authorized for that purpose, have signed the present Declaration and have affixed thereto their seals.

Done at London, in duplicate, the 8th day of April, 1904.

(L. S.) *Lansdowne.*

tissants respectifs dans les dites îles. La compétence de cette Commission et les règles de sa procédure feront l'objet d'un Accord préliminaire entre les deux Gouvernements.

En foi de quoi le Principal Secrétaire d'Etat pour les Affaires Étrangères de Sa Majesté Britannique et son Excellence l'Ambassadeur de la République Française près Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes, dûment autorisés à cet effet, ont signé la présente Déclaration, et y ont apposé leurs cachets.

Fait à Londres, en double expédition, le 8 avril 1904.

(L. S.) *Paul Cambon.*

The Marquess of Lansdowne to M. Cambon.

Foreign Office, April 8, 1904.

Your Excellency,

With reference to the Convention which whe have this day signed with regard to Newfoundland, I have the honour to remind you that it has been agreed between us, on behalf of our respective Governments, that, so soon as the Convention comes into force, and as a part of the arrangement thereby carried into effect, the Government of the French Republic will consent to the appointment of a British Consul to reside at St. Pierre, and His Britannic Majesty's Government will reciprocally consent to the appointment of a French Consul to reside at St. John's, Newfoundland.

I shall be obliged if, in acknowledging the receipt of this note, your Excellency will confirm the agreement thus come to between the two Governments.

I have, &c.
(Signed) *Lansdowne.*

M. Cambon to the Marquess of Lansdowne.

Ambassade de France, Londres, le 8 avril 1904.

M. le Marquis,

En vous accusant réception de votre note de ce jour, j'ai l'honneur de faire connaître à votre Seigneurie que mon Gouvernement consent à

admettre la nomination d'un Consul Britannique à Saint-Pierre à condition que le Gouvernement de Sa Majesté Britannique admettra la nomination d'un Consul de France à la résidence de Saint-Jean de Terre-Neuve.

Veuillez, &c.

(Signé) *Paul Cambon.*

M. Cambon to the Marquess of Lansdowne.

Ambassade de France, Londres, le 8 avril 1904.

M. le Marquis,

Dans l'Article II de la Convention de ce jour sur Terre-Neuve il est dit au troisième alinéa que les pêcheurs Français devront s'abstenir de faire usage d'engins fixes de pêche („stake-nets and fixed engines") sans la permission des autorités locales.

Je serais très obligé à votre Seigneurie de vouloir bien me faire connaître ce qu'il faut entendre par „stake-nets" et „fixed engines".

Mon Gouvernement pense qu'il ne s'agit que d'engins fixés d'une façon à peu prés permanente, et non de ces filets attachés à la côte pour la durée d'une pêche et qui ne constituent qu'un mode passager.

Je serais heureux de pouvoir transmettre à mon Gouvernement une définition précise, afin de supprimer toute cause de conflit entre nos pêcheurs et ceux de Terre-Neuve.

Veuillez, &c.

(Signé) *Paul Cambon.*

The Marquess of Lansdowne to M. Cambon.

Foreign Office, April 8, 1904.

Your Excellency,

I have the honour to acknowledge the receipt of the note which you have addressed to me requesting to be informed what signification is to be attached to the words „stake-nets and fixed engines" used in the third paragraph of Article II of the Convention we have just signed respecting Newfoundland.

I have the honour to inform your Excellency, in reply, that, according to the various Acts of Parliament relating to salmon fishery, these words include all nets or other implements for taking fish which are fixed to the soil or made stationary in any other way so that they may be left unattended by the owner.

This is the signification attached to the words by His Majesty's Government.

I have, &c.

(Signed) *Lansdowne.*

M. Cambon to the Marquess of Lansdowne.

Ambassade de France, Londres, le 8 avril 1904.

M. le Marquis,

Après avoir examiné l'Article II du projet de Convention sur Terre-Neuve, j'ai fait observer à votre Seigneurie que ses dispositions n'empêcheraient pas le Gouvernement de Terre-Neuve de refuser des licences pour la vente de la boëtte sur le „Treaty Shore" et que les pêcheurs Français se trouveraient ainsi privés du droit que le Gouvernement Britannique leur reconnaît d'acheter de la boëtte sur la partie de la côte de l'île comprise entre le Cap Saint-Jean et le Cap Raye en passant par le nord.

Vous avez bien voulu modifier le texte de l'Article II de façon à écarter toute ambiguïté. D'après le nouveau texte:

„Les Français pourront entrer dans tout port ou havre de cette côte, s'y procurer des approvisionnements ou de la boëtte s'y abriter dans les mêmes conditions que les habitants de Terre-Neuve."

Cette rédaction paraît à votre Seigneurie impliquer que le Gouvernement de Terre-Neuve ne pourra supprimer le commerce de la boëtte sur le „Treaty Shore."

En prenant acte de cette interprétation, je vous remercie d'avoir bien voulu m'aider à éclaircir un point qui pouvait laisser subsister un germe de difficulté pour l'avenir.

Veuillez, &c.

(Signé) *Paul Cambon.*

The Marquess of Lansdowne to M. Cambon.

Foreign Office, April 8, 1904.

Your Excellency,

I have the honour to acknowledge the receipt of your letter of the 8th instant relative to the wording of that part of Article II of the Convention signed by us respecting Newfoundland which relates to the right of French fishermen to purchase bait on the portion of the Coast of Newfoundland which is comprised between Cape St. John and Cape Raye, passing hy the north.

I have the honour to confirm to your Excellency the assurance which I have already given you verbally that the Article as worded precludes the suppression of the liberty hitherto enjoyed by the French fishermen of purchasing bait on the portion of the shore mentioned.

I have, &c.

(Signed) *Lansdowne.*

The Marquess of Lansdowne to M. Cambon.

Foreign Office, April 8, 1904.

Your Excellency,

With reference to the Declaration wich we have signed to-day relating to Egypt and Morocco, I have the honour to give to your Excellency, on behalf of His Majesty's Government, the following supplementary assurances, on which we have come to an agreement in the course of our discussions:

1. Measures will be taken by the Egyptian Government, in concert with the Caisse de la Dette, in order to insure, in any eventuality resulting from the Khedivial Decree annexed to the Declaration, that the staff of the Caisse will be treated in a manner at least as favourable as that in which the staff of the Daira Sanieh was treated by the decisions of the 14th December 1899 and the 20th March 1900.

If within three years from the date of the Declaration any employés of the administration of the railways, telegraphs, and port of Alexandria are discharged in consequence of the application of these arrangements, they will have the right to be treated as provided in the preceding parapraph.

2. The rights of every description possessed by the „Société Générale des Sucreries et de la Raffinerie d'Égypte" at the date of the aforesaid Declaration in virtue of concessions of the Egyptian Government shall be maintained intact.

I shall be obliged if, in acknowledging the receipt of this communication, your Excellency will confirm the acceptance by the Government of the French Republic of the agreement thus established.

I have, &c.

(Signed) *Lansdowne.*

M. Cambon to the Marquess of Lansdowne.

Ambassade de France, Londres le 8 avril 1904.

M. le Marquis,

J'ai l'honneur d'accuser réception à votre Seigneurie de sa note de ce jour, contenant les assurances supplémentaires que le Gouvernement de Sa Majesté Britannique veut bien donner à mon Gouvernement pour compléter la Déclaration échangée à la date d'aujourd'hui au sujet de l'Égypte et du Maroc.

Ces assurances sont les suivantes:

1. Des dispositions seront prises par le Gouvernement Égyptien, d'accord avec la Commission de la Dette, afin d'assurer, dans toute éventualité résultant du Décret à intervenir au personnel de la Caisse de la Dette un traitement au moins aussi favorable que celui qui a été accordé au

personnel de la Daira Sanieh par les décisions du 14 décembre 1899 et du 20 mars 1900.

Si dans les trois années à partir de la date de la Déclaration de ce jour, quelques employés de l'administration des chemins de fer, télégraphes, et port d'Alexandrie, venaient à être licenciés par suite de l'application de cet arrangement ils auraient le bénéfice du traitement stipulé dans l'alinéa précédent.

2. Les droits de toute nature possédés par la Société Générale des Sucreries et de la Raffinerie d'Égypte, à la date de la Déclaration susmentionnée, en vertu des concessions du Gouvernement Egyptien, seront maintenus intacts.

Mon Gouvernement prend acte de ces assurances comme complément de la Déclaration de ce jour.

Veuillez, &c.

(Signé) *Paul Cambon.*

M. Delcassé ministre des Affaires étrangères, à MM. les Ambassadeurs de la République française à Berlin, Berne, Constantinople, Madrid, Saint-Petersbourg, Vienne, Washington, près S. M. le Roi d'Italie, près le Saint-Siège, à M. le Ministre de la République à Tanger, et à M. l'Agent diplomatique et Consul général de France au Caire.

Paris, le 12 avril 1904.

Les grands intérêts, d'ordre à la fois moral et matériel, qui sont attachés à l'entente de l'Angleterre et de la France, appelaient un règlement amiable des questions qui divisaient les pays et d'où pouvaient, en certaines conjonctures, sortir un conflit. A Londres comme à Paris, les Gouvernements s'en rendaient compte. Les visites échangées, l'an dernier entre le Roi Edouard et le Président de la République, avaient montré que l'opinion, des deux côtés de la Manche, était favorablement disposée.

Au cours de l'entretien que j'eus l'honneur d'avoir avec Lord Lansdowne, le 7 juillet, l'éminent Ministre des Affaires Etrangéres du Roi et moi, nous avons examiné successivement tous les problèmes qui se posaient devant nous. Il fut reconnu qu'il n'était pas impossible de trouver pour chacun d'eux une solution également avantageuse aux deux parties.

Nos communs efforts, que n'a pas cessé de diriger un même esprit de conciliation, ont abouti aux accords du 8 avril dont je vous adresse, ci-joint, le texte authentique, en y joignant quelques explications sur leur nature et leur portée.

Terre-Neuve.

Les affaires de Terre-Neuve étaient de celles qui, à de nombreuses reprises, avaient donné lieu à des discussions de plus en plus épineuses. L'origine en est lointaine. L'article XIII du Traité d'Utrecht avait abandonné à la Grande-Bretagne, Terre-Neuve et les îles adjacentes. Ce n'était plus que sur la côte occidentale que nous pouvions venir prendre et sécher

le poisson, et seulement pendant le temps habituel de la pêche. Tout établissement sédentaire nous était interdit.

Les difficultés de plus en plus fréquentes auxquelles se heurtait l'exécution du Traité d'Utrecht nécessitèrent, dans le Traité de Versailles, en 1783, une clause spéciale, complétée par la Déclaration du Roi Georges de même date, en vue d'éviter les querelles journalières entre les pêcheurs des deux nations.

Malgré les précautions prises, on peut dire qu'au cours du siècle dernier il ne s'est passé d'année où l'exercice de notre privilège n'ait été la cause de réclamations ou d'incidents. La population de Terre-Neuve, qui comptait, à peine, à l'origine 4 à 5.000 âmes, s'est accrue progressivement jusqu'à 210.000 habitants. Dans le désir de ceux-ci de développer les ressources de leur île, le French Shore leur apparaisait comme fermé à tout progrès; ils ne pouvaient tirer parti d'une région dans laquelle ils espéraient trouver des mines et des terres favorables à l'agriculture, et que nous-mêmes ne pouvions utiliser. C'est ainsi que grandit un courant d'opinion hostile à notre privilège. La pression irrésistible des nécessités de l'existence, sous un climat déshérité, vint ébranler chaque jour davantage les barrières des servitudes anciennes et, malgré nos réclamations incessantes, les habitants de l'île s'établirent peu à peu sur une partie du littoral convoité.

Notre résistance à ces envahissements devenait d'autant plus malaisée, qu'en même temps que l'île voyait croître sa population et ses besoins, le nombre de nos pêcheurs fréquentant le French Shore diminuait d'année en année. Du chiffre de 10.000 qu'il atteignait dans le milieu du siècle dernier, il descendait à 4 ou 500 à peine pour tomber même, l'année dernière, à 238. En faveur de ces rares équipages et pour les quelques semaines consacrées par eux chaque année à la pêche dans ces parages, les habitants du pays se voyaient interdire l'accès et la jouissance de près de la moitié du périmètre de l'île.

C'est cet état de choses, impatiemment supporté, qui fit repousser par le Parlement de Terre-Neuve les arrangements négociés entre les Cabinets de Paris et de Londres en 1857 et en 1885, en vue de réaliser un compromis entre la rigueur des traités anciens et les exigences de la situation présente.

Le dernier de ces accords contenait une stipulation, qui nous accordait la faculté de l'approvisionnement de la boëtte, c'est-à-dire du hareng capelan, encornet, etc., nécessaire à la pêche de la morue. Ce fut le motif qui porta le Parlement de Saint-Jean à rejeter l'arrangement de 1885. Dès l'année suivante, il vota même le Bait act dont l'objet était d'interdire la vente de la boëtte aux étrangers. Cette loi a cessé provisoirement d'être appliquée de puis 1893, mais le Parlement Terreneuvien a établi, en 1898, un impôt sur la vente de la boëtte qu'à defaut de stipulation expresse on pouvait craindre de voir appliquer le long du French Shore.

En même temps que la question soulevée par le Bait act, un nouvel élément de constestation surgissait à propos d'une industrie de création

récente à Terre-Neuve, celle des homarderies, dont on prétendait nous contester l'exercice au French Shore, parce que le homard est un crustacé et que les stipulations du Traité d'Utrecht ne visent que le poisson. En 1890, un modus vivendi intervint sur la base de l'état de choses existant au 1er juillet 1889. Cet arrangement, essentiellement provisoire et limité d'abord à la campagne de 1890, dut, faute de mieux, être renouvelé depuis lors, parfois à grand'peine. Il aurait suffi d'un refus du Parlement de Terre-Neuve pour susciter d'inextricables complications.

Dans cette situation, la nécessité s'imposait d'une façon pressante de chercher une solution définitive. Nos droits à Terre-Neuve se composaient de deux éléments: la pêche, c'est-à-dire l'usage des eaux terrioriales, et le séchage du poisson, c'est-à-dire l'usage de la côte. Par son caractère exclusif, ce dernier principe était devenu insupportable aux habitants. Nous en consentons l'abandon. Mais il faut remarquer que les circonstances ne sont plus les mêmes qu'au temps du Traité d'Utrecht, le séchage pouvant se faire et se faisant, en effet, soit à bord, soit, grâce à la rapidité des communications, à Saint-Pierre et Miquelon et même en France. Par contre, notre droit de pêche dans les eaux territoriales reste intact, et c'est là l'essentiel. Quant à la pêche sur les Grands Bancs, qui est infiniment plus fructueuse et par suite plus recherchée, elle sera facilitée par la faculté qui nous est désormais garantie de nous approvisionner de boëtte sur toute l'étendue du French Shore. C'est précisément cette pêche au large que le Gouvernement a toujours tenu à encourager comme une des plus utiles écoles de nos gens de mer et une préparation précieuse à l'entraînement naval.

Le homard étant devenu de plus en plus rare par suite de la pêche intensive dont il est l'objet depuis quelques années, il a été convenu que des règlements généraux pourraient être édictés en vue de la prohibition de la pêche de ce crustacé, ou même d'autres poissons, pendant un temps déterminé. Ces règlements nous seront communiqués au moins trois mois avant leur entrée en vigueur. En vue de favoriser la reproduction, il a été stipulé que les engins de pêche fixes ne pourraient être utilisés sans la permission des autorités locales. Mais, afin de prévenir toute contestation à cet égard, nous avons prié le Gouvernement britannique de nous dire ce qu'il entendait exactement par engins fixes. Il résulte d'un échange de lettre entre notre Ambassadeur et le Principal Secrétaire d'Etat que, d'après la législation britannique, ces mots ne s'appliquent qu'à des établissements permanents. Ainsi, nos pêcheurs pourront continuer à faire usage des filets attachés à la côte pour la durée d'une pêche et qui ne constituent qu'un mode passager. Rien ne s'opposera non plus à ce qu'ils installent des casiers à homards, et la pêche de ce crustacé, qui nous avait été jadis contestée et avait donné lieu à de longs débats, se trouve définitivement admise en droit comme dans la pratique.

Outre la pêche proprement dite, nous avons encore au French Shore des intérêts dont il devait être tenu compte, ceux des propriétaires de sécheries et de homarderies qui se trouvent dépossédés par le fait de la mise

en exploitation de la côte jusqu'à présent réservée à leurs seules industries. Il y a été pourvu par l'article III de la Convention du 8 avril qui assure aux propriétaires de ces établissements, ainsi qu'aux marins employés par eux, une indemnité dont le chiffre sera déterminé par une Commission d'officiers de marine français et anglais, avec recours éventuel à un surarbitre dont le choix appartiendra à la Cour internationale de la Haye. Toutes les garanties sont par conséquent prévues pour la liquidation équitable des quelques entreprises dont il s'agit.

On voit que, pour écarter des risques de conflits qui menaçaient de devenir inquiétants, nous ne faisons qu'abandonner à Terre-Neuve des privilèges difficilement défendables et nullement nécessaires, en conservant l'essentiel, c'est-à-dire la pêche dans les eaux territoriales, et en mettant pour l'avenir hors de toute contestation possible, un droit précieux, celui de pêcher librement, d'acheter sans entraves, la boëtte sur toute l'étendue du French Shore.

Ces compensations ne sont pas, d'ailleurs, les seules qui nous soient consenties.

Afrique Occidentale

Nous en recevons d'autres, dans l'Afrique Occidentale, d'une importance très appréciable pour le développement de notre empire colonial. Les concessions de l'Angleterre portent sur trois points: la Gambie, les îles de Los et la région comprise entre le Niger et le Tchad.

La rivière de la Gambie constitue une sorte d'anomalie heureuse dans le régime hydrographique du littoral de l'Afrique occidentale. Alors, en effet, que la plupart des cours d'eau y sont presque impraticables une partie de l'année, la Gambie peut, jusqu'à une distance de plus de 300 kilomètres à vol d'oiseau de son embouchure, porter des bateaux de mer. C'est dans cette région, une des principales voies de pénétration fluviale; nous en étions exclus jusqu'à présent.

L'établissement de l'Angleterre sur la Gambie remonte à l'origine même des entreprises coloniales britanniques à la côte occidentale d'Afrique. Dès 1588, on voit la reine Elisabeth octroyer une charte commerciale pour la Gambie à une Compagnie anglaise. Puis, vers le milieu du XVIIe siècle, Fort-James est construit à l'embouchure de la rivière. En 1783, la France reconnaît à l'Angleterre par l'article 10 du Traité de Versailles la possession de Fort-James et de la rivière de Gambie. En 1816, Sainte-Marie-de-Bathurst est fondée, et dix ans plus tard des arrangements avec les chefs indigènes assurent à l'Angleterre les territoires adjacents au cours du fleuve dans sa partie navigable. Enfin, nous-mêmes, en 1857, nous cédions le comptoir d'Albreda enclavé, en face de Sainte-Marie-de-Bathurst, au milieu des territoires anglais et qui constituait le dernier vestige sur ce point des rivalités coloniales des deux nations.

A cette époque toutefois, et dans les années qui suivirent, on songeait moins à acquérir des territoires en dehors des côtes, et l'Angleterre, maîtresse du cours navigable de la Gambie, s'occupa plutôt d'exploiter les

avantages que lui donnait la possession de cette voie de transit. Mais lorsque, à une époque plus récente, s'annonca le mouvement qui allait diriger vers l'arrière-pays les visées des nations européennes et étendre à l'intérieur des compétitions territoriales jusque là cantonnées sur le littoral, on vit, en 1882, se mettre en marche et monter la vallée de la Gambie une mission anglaise dont le plein succès eût fait, de ce qui constitue aujourd'hui la Guinée française, une enclave des possessions britanniques; notre établissement dans le haut bassin du Niger eût été mis en question.

Aujourd'hui, c'est la Guinée qui, par derrière la Gambie et Sierra-Leone, s'est soudée aux autres possessions françaises, et c'est la Gambie qui se trouve enserrée dans nos territoires.

Toutefois, s'il nous fut donné de devancer dans cette région les entreprises étrangères l'historique succinct qui vient d'être fait permettra de comprendre pourquoi nous ne fûmes pas à même, lorsque s'ouvrirent, en 1889, les négociations pour le règlement des situations territoriales respectives, d'obtenir un établissement sur la partie navigable du cours de la Gambie. Il n'y avait pas non plus à espérer une cession ou un échange. En 1876, un projet de cette nature avait bien été un moment agité entre les Cabinets de Paris et de Londres, mais l'opinion publique s'était prononcée en Angleterre avec tant d'énergie contre tout abandon de la Gambie qu'il ne fut pas possible d'y revenir.

L'arrangement de 1889 assura donc au Gouvernement britannique une zone de 10 kilomètres de chaque côté de la rivière entre la côte et le point terminus de la colonie anglaise, qui fut fixé au-dessus de Yarboutenda, en amont des rapides qui nous fermaient absolument le bief navigable.

Il nous est ouvert aujourd'hui: d'une part, en effet, le territoire anglais s'arrêtera désormais au-dessous de Yarboutenda. Nous acquérons ainsi environ 20 kilomètres du cours de la rivière dans la partie représentée comme accessible en tout temps aux bâtiments de haute mer.

Mais, d'autre part, afin de nous mettre à l'abri d'une de ces surprises trop fréquentes dans des régions encore insuffisamment pratiquées, il a été entendu que dans le cas où la Gambie ne serait pas utilisable jusque-là pour la navigation maritime, un accès nous serait donné sur un point du fleuve accessible aux bâtiments de haute mer.

D'ailleurs, nous nous sommes assuré sur la Gambie la jouissance du régime prévu par l'Acte général de Berlin pour garantir sur le Niger la liberté de la navigation, et nous nous sommes en même temps ménagé le bénéfice des applications que nous en avons faites d'un commun accord avec l'Angletrre à la partie anglaise du bassin du Niger par la Convention du 14 juin 1898.

Nous croyons donc avoir tiré de la situation ce qu'elle pouvait équitablement nous donner.

Les îles de Los (autrefois îles des Idolo) que vient de nous céder l'Angleterre, sont au nombre de six, dont trois grandes: Tamara, Factory et Roume, et trois petitis appelées île de Corail ou Yelisoubé, Bonne ou White Island, île Kid ou Kouraté Minghi.

Situé à moins de cinq kilomètres de la côte, en face du port récemment fondé de Konakry, capitale de la Guinée française, ce groupe en commande immédiatement les accès.

Il y a près de quatre-vingts ans, qu'à la suite de traités passés en 1826 avec des chefs de la côte, l'Angleterre s'était installée aux îles de Los. A cette époque, le commerce européen s'établissait de préférence dans les îles voisines du littoral. Il y trouvait pour ses comptoirs plus de sécurité et de salubrité.

A cet égard, les îles de Los réunissaient comme station d'entrepôt pour le trafic du Fouta-Djallon et du haut bassin du Niger, des avantages qui ne devaient pas échapper à nos voisins d'outre-Manche, bons connaisseurs en pareille matière. Elles offraient en effet un mouillage profond et sûr, un terrain fertile et des ressources en eau potable.

Aussi, lorsqu'en 1882 on reconnut, à Londres et à Paris, que le moment était venu de substituer à l'ancien éparpillement des comptoirs à la Côte occidentale d'Afrique, des groupements homogènes, le Gouvernement britannique, tout en se montrant disposé à nous reconnaître, au Nord de sa colonie de Sierra-Leone, ce qui constitue aujourd'hui la Guinée française, en excepta les îles de Los dont il se refusa catégoriquement à se dessaisir.

Successivement, dans les vingt années qui suivirent, les questions pendantes entre les deux Gouvernements dans cette partie du continent noir se réglèrent, mais les îles de Los n'en demeurèrent pas moins anglaises.

Cet état de choses ne peuvait durer sans dommages pour nous.

On sait l'extension considérable qu'a prise depuis quelque temps le port de Konakry. Son importance paraît cependant devoir s'accroître encore à bref délai. C'est déjà aujourd'hui un des points les plus fréquentés de la Côte occidentale d'Afrique, mais ce sera demain aussi la tête de ligne de la voie ferrée actuellement en construction, et qui en fera le débouché de la vallée supérieure du Niger ainsi que des riches régions avoisinantes.

Au point de vue commercial, les îles de Los ont été, dès lors, pratiquement annihilées. Mais comme elles sont, par leur situation même, le complément indispensable de notre nouveau port, elles se trouvent avoir acquis ainsi pour nous une valeur nouvelle et bien plus grande encore. Ce groupe borde, en effet, sur une longueur de plusieurs kilomètres et juste en face de Konakry le chenal d'accès de ce port qu'il domine et auquel il forme comme une sorte de digue et de brise-lames naturel. C'est l'emplacement nécessaire des signaux d'éclairage et de balisage destinés à compléter ceux du port lui-même et dont l'existence est essentielle à la sécurité de ses abords. Or, jusqu'à présent, nous ne pouvions rien faire aux îles de Los, ou tout au moins dépendions-nous du bon vouloir d'autrui.

D'autre part, si ce groupe avait perdu son importance comme station commerciale, il n'en avait pas moins conservé tous ses avantages maritimes. L'Amirauté anglaise restait toujours maîtresse d'utiliser les îles de Los pour

y créer en eau profonde une station navale. A tout moment, nous pouvions y voir mouiller des bâtiments de la marine militaire britannique. En outre, les hauteurs qui s'élèvent sur les deux îles principales de Tamara et Factory tiennent sous leur commandement la côte basse et marécageuse de Konakry. De ces sommets, on eût pu balayer sans risque tous nos établissements.

Telle est la situation dont nous venons de nous affranchir. Tels sont les avantages et les sécurités que nous venons d'acquérir.

Nous avons fondé à Konakry un port qui, si l'avenir répond à ce que semblent promettre les résultats déjà acquis, sera un des grands entrepôts commerciaux de cette côte. La clef de ce port est, depuis hier, entre nos mains.

Une partie importante de l'arrangement qui vient d'être signé est consacrée aux régions entre le Niger et le Tchad. Il ne s'agit de rien moins en effet que du remaniement, ou mieux d'une transformation à notre très grand avantage, de l'ensemble de la frontière déterminée par la Convention du 14 juin 1898.

On sait qu'une déclaration signée à Londres le 5 août 1890 donnait pour limite à la zone d'influence de la France, au sud de ses possessions méditerranéennes, une ligne de Say sur le Niger à Barroua sur le lac Tchad, tracée de façon à comprendre dans la zone d'action de la Compagnie anglaise existant alors sous le nom de Compagnie du Niger, «tout ce qui appartenait équitablement au royaume de Sokoto».

Cette ligne devait être déterminée par des commissaires à nommer à cet effet et qui auraient également pour mission de déterminer les zones respectives d'influence des deux pays à l'Ouest et au Sud du moyen et du haut Niger.

Ce fut à cette dernière partie de leur œuvre que les commissaires se vouèrent tout d'abord. Une série d'arrangements vint successivement, dans les années qui suivirent, régler la situation à la Gambie à Sierra-Leone, à la Côte-d'Or, mais ce ne fut qu'en 1896, et finalement dans les négociations de 1897—1898, que fut abordée la question de la délimitation entre le Niger et le Tchad, en même temps, d'ailleurs, que le règlement de la situation dans la zone voisine du fleuve sur la rive droite.

A diverses reprises, le Gouvernement Britannique avait laissé entendre que la ligne Say-Barroua n'était pour lui qu'un minimum. C'est de cette base que partirent en 1897—1898 les commissaires anglais qui étendaient même en ce moment leurs prétentions jusqu'à l'Aïr.

Les pourparlers se poursuivaient lorsqu'un incident vint singulièrement compliquer la situation. Une mission française était partie, entre temps, pour reconnaître la zone litigieuse; mais au lieu de se tenir, comme il avait été convenu, au Nord de la ligne Say-Barroua, elle vint pour ainsi dire aux portes de Sokoto, prendre la ville d'Argoungou.

Cet incident produisit de l'autre côté de la Manche une émotion qui eut son écho au Parlement britannique, et exerça une influence décisive sur la négociation alors en cours. La résistance des commissaires français

se trouva entravée, et finalement on dut se contenter de conserver Zinder, qui donnait le commandement des accès par le Nord du grand centre commercial de Kano que la déclaration de 1890 plaçait incontestablement dans le lot de la Grande-Bretagne, et c'est ainsi que fut tracé autour de Sokoto l'arc de cercle de 100 milles de rayon dont il a été si souvent parlé depuis.

On n'avait d'ailleurs en 1898, sur les régions où passait la nouvelle frontière, que des notions encore vagues.

Le chemin connu et pratiqué passait par Sokoto et Kano, c'est-à-dire par des territoires dévolus depuis 1890 à l'Angleterre.

Mais lorsqu'une fois la Convention signée, le 14 juin 1898, nous envoyâmes un détachement occuper Zinder, le passage au Nord de la nouvelle frontière, et notamment au-dessus de l'arc de cercle tracé autour de Sokoto, présenta des difficultés presque insurmontables. Il fallait traverser une région désertique et, au fur et à mesure de l'avancement de la colonne, creuser des puits qui se tarissaient presque immédiatement.

Cependant, force nous avait été d'emprunter les territoires anglais pour faire passer les convois destinés au ravitaillement de Zinder. Mais l'autorisation n'en avait été concédée qu'à titre temporaire, et il est évident qu'elle ne pouvait être indéfiniment sollicitée. La situation était donc absolument précaire.

A supposer même qu'au prix de lourds sacrifices, nous eussions pu réussir à nous maintenir sur ce point, le résultat n'eût été qu'absolument insuffisant. Ce qu'il fallait réaliser, c'était la jonction de nos possessions du Soudan français avec celles du centre africain. Or, les mécomptes ne furent pas moindres pour la partie de la frontière de 1898 qui s'étendait entre Zinder et le Tchad qu'ils ne l'avaient été entre le Niger et Zinder. Là encore, la limite se tenait dans des régions désertiques impraticables, et la mission Foureau-Lamy, en arrivant à Zinder par l'Aïr, s'était vue contrainte, pour trouver de l'eau et pouvoir gagner par le Tchad, nos territoires des rives nord et est du lac, de descendre au sud-est, en territoire anglais, où passait la seule route praticable, sur les bords de la rivière Komadougou.

Somme toute, nous avions acquis par la Convention du 14 juin 1898, à l'est du Niger et dans les entours du Tchad, certains territoires, mais il nous était pratiquement impossible d'y accéder. Le désert séparait nos possessions du Soudan de celles du Tchad, et par un concours de circonstances imprévues, l'homogénéité de notre empire africain, depuis si longtemps poursuivie, n'était pas obtenue.

Sur le Tchad lui-même, et comme si, dans ces régions, les événements devaient partout tourner contre nous, les reconnaissances ultérieures amenaient à constater que le contour de la nappe d'eau différait sensiblement de celui que prévoyaient les connaissances carthographiques au moment de la Convention de 1898. D'après la carte annexée à cet accord, les eaux du lac se trouvaient réparties entre les deux pays à peu près proportionnellement à ce qu'ils possédaient des rives. Un large passage en eau libre

nous était notamment réservé à l'est entre les parties inférieure et supérieure. Or, d'après les travaux les plus récents, un amas serré d'îles borderait toute cette rive orientale, et viendrait en contact avec la limite anglaise. Nos communications par bateau entre les rives du nord et du sud ne pouvaient donc se faire sans passer par les eaux britanniques.

C'était ainsi toute une négociation qu'il fallait reprendre, mais c'était encore plus un nouveau principe qu'il fallait introduire et faire accepter.

Il était évident que, pour aboutir, il devenait essentiel de s'affranchir des étroites discussions territoriales pour s'inspirer d'idées plus larges.

En équité, on nous devait une route, et nous l'avons obtenue. En droit, néanmoins, rien n'y obligeait.

On ne peut, pour la description géographique de la nouvelle frontière, que renvoyer aux termes de l'arrangement. Un coup d'œil sur la carte permettra de se rendre compte des résultats acquis. Comme on le verra, une voie s'ouvre à nous désormais sans solution de continuité du Niger à Zinder et de Zinder au Tchad. Cette route, nous la connaissons; nos convois, nos missions l'ont parcourue, ils y ont trouvé de l'eau et les autres ressources requises pour assurer des communications régulières et normales.

De plus, sur les eaux du lac Tchad, une clause spéciale nous garantit une situation proportionnellement égale à celle que nous donnait la Convention de 1898. Notre navigation en eau libre française est ainsi désormais assurée.

Enfin, cette délimitation nouvelle comporte pour nous de notables agrandissements de territoire. La valeur économique de ces acquisitions est encore incertaine; mais ce côté de l'arrangement mérite à un autre point du vue de retenir l'attention. On remarquera, en effet, qu'il est entendu qu'on tiendra compte, pour le tracé définitif de la frontière, des Etats indigènes existants, et que, au-dessous de Zinder, la limite pourra, s'il est nécessaire, se déplacer à cet effet vers le Sud. Il y a dans cette clause un élément important de bon ordre et de sécurité pour les relations des deux pays. Les frontières tracées arbitrairement à travers des groupements de populations risquent d'y amener du trouble et du malaise, et c'est ainsi que la frontière de 1898 coupait presque en deux, en lui enlevant les parties les meilleures de son territoire, le Sultanat de Zinder, que le nouvel arrangement garantit contre un morcellement dont les conséquences eussent, à tous égards, été fâcheuses.

On le voit donc, ici encore l'Angleterre se trouvait en possession d'avantages dont la récupération était pour nous essentielle. C'est chose faite aujourd'hui. Nos réserves d'avenir dans ces régions si importantes peut-être pour le développement futur de notre empire africain sont désormais à l'abri.

Maroc.

La partie capitale de l'arrangement qui vient d'être conclu est relative au Maroc. De toutes les questions où sont engagés les intérêts de la France, aucune, en effet, n'a une importance comparable à la question marocaine;

et il est évident que de sa solution dépendaient la solidité et le développement de notre empire africain et l'avenir même de notre situation dans la Méditerranée.

Le Maroc a une population de beaucoup supérieure à celles de l'Algérie et de la Tunisie réunies, par conséquent une main-d'œuvre plus abondante; et il possède en quantité ce que n'ont ni la Tunisie ni l'Algérie: l'eau toujours. Placé sous notre influence, c'est notre empire du nord de l'Afrique fortifié; soumis à une influence étrangère, c'est pour le même empire la menace permanente et la paralysie. Or, l'heure était veuue de savoir qui aurait au Maroc l'influence prépondérante. L'état actuel de choses n'y peut, en effet, durer qu' à la conditiou d'être soutenu et amélioré. Il incombait à notre diplomatie de faciliter à la France cette tâche que la nature et le voisinage lui attribuent: c'est à quoi elle s'est appliquée avec persévérance, mettant à profit toutes les circonstances favorables qui s'offraient.

En obtenant de l'Angleterre, dont on connaît la forte situation aux portes mêmes du Maroc, la déclaration qu'il appartient à la France de veiller à la tranquillité de ce pays et de lui prêter son assistance pour toutes les réformes administratives, économiques, financières et militaires dont il a besoin, ainsi que l'engagement de ne pas entraver son action à cet effet, nous avons obtenu un résultat dont il est superflu de faire ressortir la valeur.

C'est à nous maintenant, en nous gardant de tout entraînement, en tenant compte des expériences faites ailleurs, en nous montrant les meilleurs amis du Maroc parce que les plus intéressés à sa prospérité, de poursuivre avec méthode, avec esprit de suite, sans efforts et sans sacrifices inutiles, l'achèvement de notre œuvre civilisatrice qui fortifiera singulièrement la puissance française sans léser les droits acquis de personne et qui finalement sera un bénéfice pour tout le monde.

Dans une pensée d'amitié vis-à-vis de l'Espagne, avec laquelle nous entretenons des relations traditionnelles de cordialité, nous avons tenu à prendre en considération les intérêts qu'elle tient, elle aussi, de son voisinage et de ses possessions territoriales sur la côte marocaine de la Méditerranée. Aussi, nous concertons-nous avec le Gouvernement du Roi avec le désir de donner satisfaction aux aspirations légitimes d'un pays voisin et ami.

Egypte.

En ce qui concerne l'Egypte, vous remarquerez que l'état politique n'en subit aucun changement. Le principal intérêt de la négociation qui vient d'aboutir est de l'ordre financier. Une grande partie de la dette égyptienne est placée en France. Il s'agissait d'assurer à nos porteurs les plus larges garanties, tout en adaptant celles-ci aux conditions nouvelles résultant du relèvement financier de l'Egypte.

Tout le monde connaît les origines du régime actuel. On sait comment les prodigalités d'Ismaël, ses énormes emprunts à gros intérêts (emprunts à 7 et même à 9 p. %, avances contractées à 30 p. %) ont, en quelques

années, mis à la charge de son pays une dette de plus de deux milliards. Le crédit de l'Egypte fut bientôt ruiné. A la fin de 1874, le 7 p. 0/0 égyptien tombait à 54. En avril 1876, le Gouvernement déclarait qu'il suspendait ses payements.

C'est alors que, pour la sauvegarde des intérêts des créanciers et uniquement dans ce but, fut créée la Caisse de la Dette. Des revenus spéciaux, ceux de quatre provinces, ainsi que les produits des chemins de fer, des douanes, des tabacs, furent affectés au service de la Dette, et la Caisse reçut le droit de poursuivre devant les tribunaux mixtes l'exécution des engagements pris par le Gouvernement.

Malgré ces garanties, la totalité des intérêts dus ne put être payée. Les revenus affectés n'y suffisaient pas. De nouvelles mesures s'imposèrent. La loi de 1880 qui fut l'œuvre de commissaires désignés par la France, l'Angleterre, l'Allemagne, l'Autriche-Hongrie, et l'Italie, et qui reçut l'assentiment des Puissances, fixa les affectations spéciales des dettes, privilégiée, unifiée et Daïra-Sanieh, abaissa à 4 p. $^0/_0$ l'intérêt de l'Unifiée et régla à nouveau les attributions de la Caisse de la Dette, ainsi que celles des Administrations des chemins de fer et de la Daïra-Sanieh.

L'Egypte était mise en tutelle: son Gouvernement ne pouvait ni réduire les impôts affectés, ni contracter d'emprunt sans l'autorisation de la Caisse et il ne pouvait dépenser librement que la somme qui lui était attribuée par les Puissances sur les recettes de l'Etat.

D'autres dispositions furent prises en 1885 dans le même ordre d'idées. En garantissant un emprunt de 225 millions, jugé nécessaire, les Puissances resserrèrent une dernière fois les liens qui restreignaient la liberté d'action du Gouvernement égyptien en matière budgétaire.

On entra peu après dans une nouvelle phase. Les finances de l'Egypte devinrent prospères, la Caisse de la Dette reçut d'année en année des excédents plus considérables, le crédit du pays se rétablit.

Le moment arrivait où l'Egypte pourrait rembourser ses dettes.

En 1890, elle obtint des Puissances l'autorisation de convertir sa dette Privilégiée 5 p. $^0/_0$ en $3^1/_2$, sa dette Ddïra 5 p. $^0/_0$ en 4 p. $^0/_0$, sa dette Domaniale 5 p. $^0/_0$ en $4^1/_4$, et il fut admis en même temps qu'elle pourrait, en 1905, rembourser la Privilégiée ainsi que la dette Daïra, et quelques années plus tard la dette Domaniale, ce qui impliquait qu'aux mêmes dates pourraient disparaître les trois Administrations mixtes des chemins de fer, de la Daïra Sanieh et des Domaines.

En 1894, l'Egypte demanda en outre à convertir l'Unifiée. Mais les Puissances ajournèrent l'examen de cette proposition.

Telle était la situation au moment où se sont engagées les négociations qui viennent de se terminer.

Les Dettes Daïra et Domaniale s'amortissaient rapidement, la dette Privilégiée allait disparaître, et l'Egypte invoquant le droit qu'a tout débiteur de se libérer, préparait la conversion de l'Unifiée.

Voici maintenant les résultats auxquels ont conduit les négociations.

Aux termes du projet de décret auquel nous avons donné notre adhésion et qui doit être soumis à l'assentiment des autres Puissances, la Privilégiée ne peut plus être remboursée l'année prochaine. Elle sera remboursable au plus tôt en 1910, ce qui assure aux porteurs le maintien, sur lequel ils ne pouvaient plus compter, de l'intérêt actuel, au moins pendant cinq ans de plus.

Pour la dette Garantie 3 p. % et pour l'Unifiée 4 p. % aucun délai de remboursement n'avait été stipulé jusqu' à présent.

Il a été convenu que la dette Garantie, dont la plus grande partie paraît être placée en Angleterre, pourra, comme la Privilégiée, être remboursée en 1910. Ce remboursement libérera le Gouvernement français de la garantie qu'il a donnée.

Quant à l'Unifiée, nous avons obtenu qu'elle ne serait pas remboursée avant 1912. Les porteurs pourront donc conserver leur intérêt de 4 p. % au moins pendant huit ans. C'est pour eux un avantage équivalent à celui qu'ils auraient si l'Unifiée était remboursée immédiatement à 108, taux supérieur au cours coté à la date de la signature de la déclaration.

Enfin la Domaniale, conformément à un accord conclu en 1900, n'est pas remboursable avant 1915.

Pour la Daïra, dont la liquidation est près d'être achevée dans les conditions établies en 1890, aucune prolongation ne pouvait être stipulée. Mais ses sucreries et son réseau de chemins de fer ont été achetés par une grande Société française, qui a presque entièrement concentré dans ses mains la fabrication du sucre en Egypte. Le Gouvernement français a stipulé la confirmation des avantages faits à cette Société.

En échange de ces concessions, le Gouvernement Égyptien a demandé que les affectations de revenus établies par la loi de liquidation fussent remaniées de manière à dégager les administrations dont les recettes n'étaient plus nécessaires au cervice de la Dette.

Nous y avons consenti, pour notre part, sous les conditions suivantes:

1° La Commission de la dette publique demeurera chargée du service des intérêts et de l'amortissement des dettes Garantie, Privilégiée et Unifiée;

2° Les impôts fonciers de toutes les provinces de l'Egypte, à l'exception de celle de Keneh, qui est le gage spécial de la dette Domaniale, seront affectés au service des trois dettes garantie, privilégiée et unifiée. Il est constaté que les-dits impôts produisent actuellement 109 millions de francs, et que le service de trois dettes, y compris les dépenses de la Caisse, n'exige annuellement qu'une somme d'environ 94 millions de francs.

3° Les revenus affectés au service des trois dettes continueront à être versés directement à la Caisse de la dette par les comptables supérieurs des provinces.

4° Le Gouvernement Egyptien ne pourra, sans l'assentiment des Puissances, introduire dans les impôts affectés aucune modification pouvant

avoir pour résultat de réduire le rendement des impôts au-dessous de 104 millions de francs.

5° La Caisse de la dette sera dotée d'un fonds de réserve de 46.800.000 francs et d'un fonds de roulement de 13 millions, destinés à assurer à l'avance, avant toute entrée d'impôts, le payement du coupon semestriel.

6° Les Commissaires de la dette continueront à avoir, même individuellement, qualité pour poursuivre le Gouvernement devant les tribunaux mixtes en cas de non-exécution de ses engagements.

Ainsi jusqu'a complet amortissement ou remboursement des dettes Garantie, Privilégiée et Unifiée, la Caisse de la dette gardera les pouvoirs dont elle a besoin, y compris celui de poursuivre le Gouvernement devant les tribunaux mixtes, pour assurer le service des intérêts et de l'amortissement. En outre, l'impôt foncier de toutes les provinces de l'Egypte, à l'exception d'une seule, devient le gage commun des trois dettes garantie, privilégiée et unifiée et il restera en entier le gage des créanciers aussi longtemps que l'une de ces trois dettes subsistera. Enfin, les fonds de réserve et de roulement sont dotés de ressources suffisantes ponr parer aux retards qui pourraient se produire dans le versement de l'impôt aux caisses publiques.

Nous conservons donc toutes les garanties nécessaires à la sauvegarde des intérêts financiers de nos nationaux. Nous en obtenons même de nouvelles par l'engagement qui est pris vis-à-vis de nous de ne pas convertir ou rembourser, avant plusieurs années, les nombreux titres égyptiens que nos porteurs conservent en raison de la sécurité que leur donne le maintien de la Caisse de la dette.

La question financière étant ainsi réglée, le Gouvernement de la République s'est préoccupé des intérêts de notre commerce et de ceux de nos nationaux établis en Egypte ou au service du Gouvernement khédivial.

Une stipulation de notre accord consacre les droits dont, en vertu des traités, conventions et usages, la France jouit en Egypte, y compris le droit de cabotage accordé aux navires français entre les ports égyptiens. De plus, nos nationaux sont garantis pendant trente ans contre tout traitement différentiel en Egypte.

Enfin, les fonctionnaires français actuellement au service de l'Etat égyptien obtiennent l'assurance qu'ils ne seront pas mis, quoi qu'il arrive, dans des conditions moins avantageuses que celles appliquées aux fonctionnaires anglais du même service.

A côté de ces intérêts matériels, il en est d'autres, des intérêts moraux, ceux de la science et de la langue françaises, que le Gouvernement de la République devait sauvegarder. L'opinion apprendra donc avec faveur que la Direction générale des Antiquités égyptiennes, illustrée par nos savants, leur est définitivement réservée. Enfin, nos écoles d'Egypte sont assurées de jouir toujours de la même liberté et l'enseignement de notre langue, si répandu et si apprécié en Egypte est désormais à l'abri de toute vicissitude.

Canal de Suez.

La défense de nos intérêts particuliers n'a pas détourné notre attention d'une dernière question, d'une portée générale, même universelle, puisqu'elle intéresse le monde entier, celle du libre usage de canal de Suez.

Restant fidèle à ses traditions, le Gouvernement de la République a été heureux de pouvoir amener le Gouvernement britannique à prendre l'engagement de maintenir entière la liberté d'une des voies les plus importantes du trafic international. Il doit enregistrer avec une satisfaction particulière l'adhésion de la Grande-Bretagne à la mise en vigueur du traité du 29 octobre 1888.

Siam.

Aux termes de la déclaration de Londres du 15 janvier 1896, la France et l'Angleterre avaient en quelque sorte neutralisé les provinces centrales du Siam comprises principalement dans le bassin de la Menam, de même que la partie formant le fond du golfe. A cet effet, elles s'étaient, engagées à n'acquérir aucun privilège ou avantage particulier dont le bénéfice ne fût pas commun aux deux puissances signataires. Elles avaient, en outre, convenu de n'entrer dans aucun arrangement séparé qui permît à une tierce Puissance de faire ce qu'elles s'interdisaient réciproquement par cette déclaration.

Toutes ces dispositions avaient un caractère plutôt négatif.

L'arrangement qui vient d'être conclu avec le Cabinet de Londres, tout en maintenant les clauses qui précèdent pour les mêmes territoires, établit que les possessions siamoises situées à l'Est et au Sud-Est de cette zone, ainsi que les îles adjacentes, seront désormais considérées comme relevant de l'influence française, tandis que les régions situées à l'Ouest de la même zone et du golfe de Siam relèveront de l'influence anglaise. Tout en répudiant l'idée d'annexer aucun territoire siamois et en s'engageant à respecter strictement les traités existants, les deux Gouvernements conviennent, au regard l'un de l'autre, que leur action respective s'exercera librement dans chacune des sphères d'influence ainsi déterminées, ce qui confère au nouvel accord une portée pratique.

Nouvelles-Hébrides.

La situation spéciale des Nouvelles-Hébrides avait donné lieu à des contestations touchant la validité des acquisitions de terrain faites soit par des sujets britanniques, soit par des citoyens français. L'absence de toute juridiction dans ces îles rendait insolubles les différends survenus à cet égard. Il a été convenu qu'un arrangement serait conclu pour mettre fin à ces difficultés.

Zanzibar et Madagascar.

Enfin les deux Puissances ont tenu à profiter des négociations engagées pour régulariser la situation de la Grande-Bretagne à Zanzibar et celle de la France à Madagascar. C'était mettre fin aux réclamations

embarrassantes qui, depuis plusieurs années, avaient gêné notre action dans la grande île de l'Océan Indien.

Ainsi, grâce à une mutuelle bonne volonté, nous sommes parvenus à régler les diverses questions qui, depuis trop longtemps pesaient sur les rapports de la France et de l'Angleterre. Les premières manifestations de l'opinion à l'étranger montrent toute l'importance qu'on y attache à ce règlement et qu'on le considère comme une précieuse garantie de plus pour la paix générale. D'autre part, les appréciations favorables dont ces arrangements sont également l'objet en Angleterre et en France, indiquent assez qu'ils sauvegardent pleinement les intérêts essentiels de chacun, condition nécessaire d'une entente durable et féconde.

Delcassé.

2.

ESPAGNE, FRANCE.

Déclaration relative à l'adhésion de l'Espagne à la déclaration franco-anglaises du 8 avril 1904, concernant le maintien de l'intégrité du Maroc; signée à Paris, le 3 octobre 1904.

Boletin oficial del Ministerio de Estado. Octobre 1904.

Habiéndose llegado á un acuerdo sobre los derechos é intereses de España y Francia en relación con el Imperio marroquí, ambos Gobiernos han convenido en hacerlo constar por medio de la siguiente Declaración:

El Gobierno de S. M. el Rey de España y el Gobierno de la República francesa, habiéndose puesto de acuerdo para fijar la extensión de sus derechos y la garantía de sus intereses, que resultan, para España, de sus posesiones en la costa de Marruecos, y para Francia, de sus posesiones argelinas, y habiendo el Gobierno de Su Majestad el Rey de España, en consecuencia, dado su adhesión á la Declaración franco-inglesa de 8 de Abril de 1904, relativa á Marruecos y al Egipto, que le fué comunicada por el Gobierno de la República francesa, declaran que permanecen firmemente adictos á la integridad del Imperio de Marruecos, bajo la soberanía del Sultán. En fe de lo cual los infrascritos, el Excmo. Sr. Embajador Extraordinario y Plenipotenciario de S. M. el Rey de España, cerca del Presidente de la República francesa, y el Excelentísimo Señor Ministro de Negocios Extranjeros, debidamente autorizados con este objeto, han extendido la presente Declaración, en la que han puesto sus sellos.

Hecho, por duplicado, en París el 3 de Octubre de 1904.

(L. S.) *F. León y Castillo.*
(L. S.) *Delcassé.*

3.

RUSSIE.

Discours impérial prononcé par le Gouverneur-général de Finlande à l'occasion de l'ouverture solennelle de la Diète de Finlande; Helsingfors, 15/27 janvier 1900.

Messager Officiel.

Représentants du Peuple Finlandais,

Je vous ai réunis pour examiner des projets de lois ayant trait aux besoins locaux du Grand-Duché de Finlande. Les plus importants de ces projets visent le bien-être du pays.

Dans ces derniers temps des faits défavorables se sont révélés dans le domaine économique. Une partie de la Finlande a été affligée d'une mauvaise récolte dans le courant de l'année dernière, et en même temps l'expatriation en pays étrangers a augmenté.

Ayant autorisé le Sénat à fournir les ressources nécessaires pour les secours à donner à ceux qui ont souffert de la mauvaise récolte, j'espère que cette mesure, avec le concours de la bienfaisance, permettra à la population de supporter l'épreuve qu'elle a eu à subir, sans que les conditions de vie ordinaire en soient altérées. J'ai donné en même temps l'ordre de me soumettre un projet motivé pour la non-convocation cette année des réservistes pour les exercices ordinaires. Grâce à cette mesure, les individus qui devaient répondre à cet appel pourront ne pas abandonner leurs occupations journalières. L'émigration des travailleurs agricoles du pays, qui se répète d'année en année et qui se trouve en connexion essentielle avec des causes économiques générales, nécessite une étude sérieuse et exige des mesures préventives conformes. Au nombre des mesures à indiquer, la première place doit être réservée à l'amélioration des conditions du travail populaire. C'est en vue d'atteindre ce but que sont dirigées mes prescriptions tendant à faciliter à la population agricole privée de terres les moyens d'en acquérir. La solution rationnelle par la Diète des questions dont elle est saisie et qui ont trait à l'organisation foncière et à l'économie agricole contribuera à la réalisation de mes intentions.

Les travaux que vous avez en perspective exigeront l'examen sérieux, à tous égards, des questions mises à l'ordre du jour. Aucune discussion déviant dans le domaine des questions d'une portée générale pour l'Empire ne devra être tolérée. Les discussions de ce genre pendant la dernière Diète extraordinaire ont fait naître dans les esprits de la population des appréhensions fâcheuses et injustifiées. Leur renouvellement soulèverait des doutes sur la question de savoir si l'activité législative de la Diète répond aux circonstances actuelles.

En appelant la bénédiction de Dieu sur vos travaux, je déclare la Diète ouverte.

Nicolas.

4.

FRANCE, ESPAGNE.

Convention concernant la Délimitation des Possessions respectives sur la Côte du Sahara et sur la Côte du Golfe de Guinée; signée à Paris, le 27 juin 1900.*)

Le Président de la République Française et Sa Majesté le Roi d'Espagne et, en son nom, Sa Mejesté la Reine Régente du Royaume, désireux de resserrer les liens d'amitié et de bon voisinage qui existent entre les deux pays, ont résolu de conclure, à cet effet, une Convention spéciale pour la délimitation des possessions Françaises et Espagnoles dans l'Afrique Occidentale, sur la côte du Sahara et sur la côte du Golfe de Guinée, et ont nommé pour leurs Pléniplotentiaires, savoir:

Le Président de la République Française, son Excellence M. Th. Delcassé, Député, Ministre des Affaires Etrangères de la République Française, Chevalier de l'Ordre National de la Légion d'Honneur, Grand-Croix de l'Ordre Royal et Distingué de Charles III; et

Sa Majesté le Roi d'Espagne et, en son nom, Sa Majesté la Reine Régente, son Excellence M. Fernando de Leon y Castillo, décoré de l'Ordre Royal et Distingué de Charles III, Grand Croix de l'Ordre National de la Légion d'Honneur, Membre de l'Académie des Sciences, Morales, et Politiques de Madrid, son Ambassadeur Extraordinaire ot Plénipotentiaire près le Président de la République Française;

Lesquels, après avoir échangé leurs pleins pouvoirs trouvés en bonne et due forme, sont convenus des Articles suivants:

Art. I. Sur la côte du Sahara, la limite entre les possessions Françaises et Espagnoles suivra une ligne qui, partant du point indiqué par la carte de détail (A) juxtaposée à la carte formant l'Annexe 2 à la présente Convention, sur la côte occidentale de la Péninsule du Cap Blanc, entre l'extrémité de ce Cap et la Baie de l'Ouest, gagnera le milieu de la dite péninsule, puis, en divisant celle-ci par moitié autant que le permettra le terrain, remontera au nord jusqu'au point de rencontre avec le parallèle 21° 20′ de latitude nord. La frontière se continuera à l'est sur le 21° 20′ de latitude nord jusqu'à l'intersection de ce parallèle avec le méridien 15° 20′ ouest de Paris (13° ouest de Greenwich). De ce point, la ligne de démarcation s'élèvera dans la direction du nord-ouest en décrivant, entre les méridiens 15° 20′ et 16° 20′ ouest de Paris (13° et 14° ouest de Greenwich), une courbe qui sera tracée de façon à laisser à la France, avec leurs dépendances, les salines de la

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*) L'échange des ratifications a eu lieu à Paris, le 22 mars 1901.

région d'Idjil, de la rive extérieure desquelles la frontière se tiendra à une distance d'au moins 20 kilom. Du point de rencontre de la dite courbe avec le méridien 15° 20′ ouest de Paris (13° ouest de Greenwich), la frontière gagnera aussi directement que possible l'intersection du tropique du Cancer avec le méridien 14° 20′ ouest de Paris (12° ouest de Greenwich) et se prolongera sur ce dernier méridien dans la direction du nord.

Il est entendu que, dans la région du Cap Blanc, la délimitation qui devra y être effectuée par la Commission spéciale visée à l'Article VIII de la présente Convention s'opérera de façon que la partie occidentale de la péninsule, y compris la baie de l'Ouest, soit attribuée à l'Espagne, et que le Cap Blanc proprement dit et la partie orientale de la même péninsule demeurent à la France.

II. Dans le chenal situé entre la pointe du Cap Blanc et le Banc de la Bayadère, ainsi que dans les eaux de la Baie du Lévrier, limitée par une ligne reliant l'extrémité du Cap Blanc à la pointe dite de la Coquille (carte de détail (A) juxtaposée à la carte formant l'Annexe 2 à la présente Convention), les sujets Espagnols continueront comme par le passé à exercer l'industrie de la pêche concurremment avec les ressortissants Français. Sur le rivage de la dite baie les pêcheurs Espagnols pourront se livrer à toutes les opérations accessoires de la même industrie, telles que séchage des filets, réparation des engins, préparation du poisson. Dans les mêmes limites ils pourront élever des constructions légères et établir des campements provisoires, ces constructions et campements devant être enlevés par les pêcheurs Espagnols toutes les fois qu'ils reprendront la haute mer, le tout à la condition expresse de ne porter atteinte, en aucun cas ni en aucun temps, aux propriétés publiques ou privées.

III. Le sel extrait des salines de la région de l'Idjil et acheminé directement par terre sur les possessions Espagnoles de la côte du Sahara ne sera soumis à aucun droit d'exportation.

IV. La limite entre les possessions Françaises et Espagnoles sur la côte du Golfe de Guinée partira du point d'intersection du thalweg de la Rivière Mouni avec une ligne droite tirée de la pointe Coco Beach à la pointe Diéké. Elle remontera ensuite le thalweg de la Rivière Mouni et celui de la Rivière Outemboni jusqu'au point où cette dernière rivière est coupée pour la première fois par le 1° de latitude nord et se confondra avec ce parallèle jusqu'à son intersection avec le 9° de longitude est de Paris 11° 20′ est de Greenwich).

De ce point la ligne de démarcation sera formée par le dit méridien, 9 est de Paris, jusqu'à sa rencontre avec la frontière méridionale de la Colonie Allemande de Cameroun.

V. Les navires Français jouiront pour l'accès par mer de la Rivière Mouni, dans les eaux territoriales Espagnoles de toutes les facilités dont pourront bénéficier les navires Espagnols dans les eaux territoriales Françaises.

La navigation et la pêche seront libres pour les ressortissants Français et Espagnols dans les Rivières Mouni et Outemboni.

La police de la navigation et de la pêche dans ces rivières, dans les eaux territoriales Françaises et Espagnoles aux abords de l'entrée de la Rivière Mouni, ainsi que les autres questions relatives aux rapports entre frontaliers, les dispositions concernant l'éclairage, le balisage, l'aménagement et la jouissance des eaux, feront l'objet d'arrangements concertés entre les deux Gouvernements.

VI. Les droits et avantages qui découlent des Articles II, III et V de la présente Convention, étant stipulés à raison du caractère commun ou limitrophe des baies, embouchures rivières et territoires susmentionnés, seront exclusivement réservés aux ressortissants des deux Hautes Parties Contractantes et ne pourront en aucune façon être transmis ou concédés aux ressortissants d'autres nations.

VII. Dans le cas où le Gouvernement Espagnol voudrait céder, à quelque titre que ce fût, en tout ou en partie, les possessions qui lui sont reconnues par les Articles I et IV de la présente Convention, ainsi que les Iles Elobey et l'Ile Corisco voisines du littoral du Congo Français, le Gouvernement Français jouira d'un droit de préférence dans des conditions semblables à celles qui seraient proposées au dit Gouvernement Espagnol.

VIII. Les frontières déterminées par la présente Convention sont inscrites, sous les réserves formulées dans l'Annexe 1 à la présente Convention, sur les cartes ci-jointes (Annexes 2 et 3).

Les deux Gouvernements s'engagent à désigner, dans le délai de quatre mois à compter de la date de l'échange des ratifications, des Commissaires qui seront chargés de tracer sur les lieux les lignes de démarcation entre les possessions Françaises et Espagnoles, en conformité et suivant l'esprit des dispositions de la présente Convention.

Il est entendu entre les deux Puissances Contractantes qu'aucun changement ultérieur dans la position du thalweg des Rivières Mouni et Outemboni n'affectera les droits de propriété sur les îles qui auront été attribuées à chacune des deux Puissances par le procès-verbal des Commissaires dûment approuvé par les deux Gouvernements.

IX. Les deux Puissances Contractantes s'engagent réciproquement à traiter avec bienveillance les chefs qui, ayant eu des Traités avec l'une d'elles, se trouveront en vertu de la présente Convention passer sous la souveraineté de l'autre.

X. La présente Convention sera ratifiée, et les ratifications en seront échangées à Paris dans le délai de six mois, et plus tôt si faire se peut.

En foi de quoi les Soussignés ont dressé la présente Convention, qu'ils ont revêtue de leur cachet.

Fait à Paris, en double exemplaire, le 27 juin 1900.

(L. S.) *Delcassé.*
(L. S.) *F. de Leon y Castillo.*

Annexe 1.

Bien que le tracé des lignes de démarcation sur les cartes annexées à la présente Convention (Annexes 2 et 3) soit supposé être généralement exact, il ne peut être considéré comme une représentation absolue correcte de ces lignes, jusqu'à ce qu'il ait été confirmé par de nouveaux levés.

Il est donc convenu que les Commissaires ou Délégués locaux des deux pays qui seront chargés, par la suite, de délimiter tout ou partie des frontières sur le terrain devront se baser sur la description des frontières telle qu'elle est formulée dans la Convention. Il leur sera loisible, en même temps, de modifier les dites lignes de démarcation en vue de les déterminer avec une plus grande exactitude et de rectifier la position des lignes de partage des chemins ou rivières, ainsi que des villes ou villages indiqués dans les cartes susmentionnées.

Les changements ou corrections proposés d'un commun accord par les dits Commissaires ou Délégués seront soumis à l'approbation des Gouvernements respectifs.

(L. S.) *Delcassé.*
(L. S.) *F. de Leon y Castillo.*

5.

RUSSIE, FINLANDE.

Manifeste impérial et décret pour la suppression de la Constitution du Grand-Duché de Finlande et de ses lois d'administration intérieure; du 3/15 février 1899 et $\frac{\text{22 juin}}{\text{4 juillet}}$ 1899.

State Papers. T. 92.

(Traduction.)

Par la grâce de Dieu Nous, Nicolas II, Empereur et autocrate de toutes les Russies, Roi de Pologne, Grand-Duc de Finlande, &c., à tous nos fidèles sujets, savoir faisons:

Le Grand-Duché de Finlande étant devenu depuis le commencement du siècle partie intégrante de l'Empire de Russie, jouit, grâce à l'assentiment magnanime de l'Empereur Alexandre I, d'heureuse mémoire, et des Souverains ses successeurs, d'institutions spéciales, en ce qui concerne son administration intérieure et sa législation, qui répondent aux conditions locales du pays.

Mais, indépendamment des questions de législation locale de la Finlande découlant des particularités de son organisation sociale, il se présente dans

le domaine de la haute administration se rapportant à ce pays d'autres questions législatives qui, étant étroitement liées aux besoins de tout l'Empire, ne peuvent pas être de la compétence exclusive des institutions du Grand-Duché. L'ordre de solution de questions de ce genre n'est pas défini dans les lois existantes par des règles précises, et cette absence de définition a donné lieu à de graves inconvénients.

Pour écarter ces inconvénients, nous avons trouvé utile, dans notre sollicitude incessante pour le bien de tous nos fidèles sujets sans distinction, d'établir d'une manière ferme et inébranlable, pour compléter les lois existantes et à titre de direction à imprimer aux institutions compétentes de l'Empire et du Grand-Duché, l'ordre qu'elles auront à suivre pour la rédaction et la publication des lois communes à tout l'Empire.

Laissant en vigueur les règles existantes pour la publication des lois d'intérêt local, qui ont exclusivement trait aux besoins du pays Finlandais, nous avons reconnu nécessaire de réserver à notre appréciation la spécification finale des questions législatives communes à tout l'Empire.

En conséquence de ce qui précède, nous avons ratifié de notre propre main les Règlements ci-joints devant servir de base à la rédaction, à l'examen et à la promulgation des lois rendues pour tout l'Empire, y compris le Grand-Duché de Finlande.

De même que nos augustes ancêtres, nous voyons le gage du développement de la Finlande dans son unification la plus étroite avec l'Empire, Sous la protection de la Puissance Russe, la Finlande, puisant sa force dans la sauvegarde que la Russie lui donne, a marché invariablement pendant près d'un siècle dans la voie du progrès pacifique, et il nous a été agréable de nous convaincre d'après les récentes énonciations des Etats de la Diète que les sentiments de dévouement pour notre personne et pour la Russie sont vivaces dans les cœurs du peuple Finlandais.

Nous espérons que l'activité en commun des institutions de l'Empire et du Grand-Duché, fondée sur les dispositions expresses de la loi positive en ce qui regarde les affaires de législation concernant leurs intérêts réciproques, constituera la meilleure garantie des besoins réels et des intérêts de l'Empire de Russie.

Donné à Saint-Pétersbourg le 3 Février, en l'an de grâce 1899 et de notre règne le cinquième.

Nicolas.

Sa Majesté l'Empereur a inscrit de sa propre main sur le texte des documents:

„Qu'il en soit ainsi."

Saint-Pétersbourg, 5 Février, 1899.

Règlements devant servir de base pour la Rédaction, l'Examen, et la Promulgation des Lois rendues pour tout l'Empire, y compris le Grand-Duché de Finlande.

1. La spécification originaire des lois rendues pour tout l'Empire, y compris le Grand-Duché de Finlande, est effectuée chaque fois avec le consentement de Sa Majesté l'Empereur, dans les cas où, d'après le cours général des affaires de l'administration, il deviendra nécessaire de rédiger une nouvelle loi, de modifier ou de compléter une loi existante.

2. Cette spécification a lieu tant par rapport aux lois dont l'action est générale pour tout l'Empire, y compris le Grand-Duché de Finlande, que pour les lois appliquées dans les limites du Grand-Duché si elles ont trait à des nécessités communes à tout l'Empire ou si elles sont en connexion avec la législation de l'Empire.

3. L'autorisation suprême pour la publication des lois précitées (Articles 1 et 2) est demandée par le Ministre compétent de l'Empire et par le Ministre Secrétaire d'Etat du Grand-Duché de Finlande, après entente préalable entre eux à ce sujet. Le Gouverneur-Général de la Finlande, quand il trouve nécessaire, d'après la marche de l'administration du Grand-Duché, de compléter les lois existantes du pays dans l'ordre indiqué par les présents Règlements, communique au Ministre de l'Empire compétent et au Ministre Secrétaire d'Etat du Grand-Duché son avis à ce sujet, pour la suite à y donner.

4. Quand a eu lieu l'autorisation suprême pour la rédaction d'une loi commune à tout l'Empire, y compris le Grand-Duché de Finlande, le Ministre de l'Empire compétent se met en communication avec le Gouverneur-Général de la Finlande, avec le Ministre Secrétaire d'Etat du Grand-Duché de Finlande, et avec le Sénat Impérial de Finlande, pour qu'ils lui transmettent leurs conclusions à l'égard du Projet de Loi en question.

5. Certains Projets de Lois devant, d'après le régime d'administration intérieure du Grand-Duché de Finlande, être soumis à l'examen de la Diète Finlandaise, les conclusions de la Diète sont exigées également pour celles des lois en question qui rentrent dans le § 2 des présents Règlements. Les conclusions de la Diète sont prises au cours de sa plus prochaine Session ordinaire, s'il ne survient pas d'ordre Impérial convoquant dans ce but une Diète extraordinaire.

6. Après réception des conclusions du Gouverneur-Général de la Finlande, du Ministre Secrétaire d'Etat du Grand-Duché de Finlande et du Sénat Impérial de Finlande, et, dans les cas voulus (§ 5) de la Diète de Finlande, le Ministre compétent de l'Empire transmet le Projet de Loi au Conseil de l'Empire dans l'ordre voulu d'après les statuts de cette haute institution de l'Etat. Les conclusions du Sénat et de la Diète y sont annexées.

7. Le Projet de Loi est examiné par le Conseil de l'Empire d'après le mode général ordinaire avec la participation du Gouverneur-Général de

la Finlande, du Ministre Secrétaire d'Etat de Finlande, ainsi que des Membres du Sénat Impérial de Finlande qui seront désignés à cet effet sur le choix de Sa Majesté l'Empereur.

8. L'avis du Conseil de l'Empire, sanctionné par Sa Majesté l'Empereur, concernant le dit Projet de Loi, est publié dans le mode voulu dans tout l'Empire, ainsi que dans le Grand-Duché de Finlande.

Rescrit de Sa Majesté l'Empereur au Gouverneur-Général de Finlande.

(Traduction.)

Au moment où vous procédiez, le 18 mai dernier, à la clôture de la Diète extraordinaire, les représentants des classes de la population ont porté à ma connaissance l'état d'inquiétude où ils se trouvaient en prévision de la prochaine réforme du service militaire dans le Grand-Duché de Finlande et par suite de la publication du Manifeste du 3 février de l'année courante.

A mon grand regret, je constate, d'après les discours du Landmarschall et des Talmans, que les Etats ne se sont pas pénétrés des considérations d'utilité, pour tout l'ensemble de l'Empire, qui rendent absolument nécessaires ces mesures, et qu'ils se sont permis de les critiquer d'une manière déplacée. Je vous charge de porter à la connaissance générale que ces critiques sont injustifiées et qu'elles ne sont pas conformes à l'état de choses établi depuis le commencement du siècle, et par suite duquel la Finlande forme partie intégrante et indivisible de l'Empire de Russie.

Je désire en même temps que le peuple Finlandais sache qu'ayant pris, en montant sur le Trône, l'obligation sacrée de veiller aux intérêts de toutes les nationalités soumises au sceptre de la Puissance Russe, j'ai trouvé bon de conserver à la Finlande le régime spécial de législation intérieure qui lui avait été concédé par mes ancêtres. En même temps, j'ai pris sur moi, à titre d'héritage du passé, le soin de déterminer les relations du Grand-Duché à l'égard de l'Empire de Russie par une loi positive. Dans ce but, j'ai ratifié les bases fondamentales du 3 février de cette année, qui définissent les règles à suivre pour la rédaction et la promulgation des lois générales à tout l'Empire qui concernent la Finlande. C'est dans l'ordre indiqué par cet Acte Législatif et qui restera inébranlable dans l'avenir, que sera donné suite aux travaux de la Diète extraordinaire, et qu'ils seront pris en considération lors de la rédaction définitive de la loi militaire.

Comptant sur la fermeté de votre manière d'agir en vue de confirmer dans l'esprit de la population la véritable signification des mesures prises pour la consolidation de l'union de l'Empire et du Grand-Duché, j'espère que le dévouement féal du peuple Finlandais, dont je ne doute pas, sera démontré en réalité et vous facilitera l'exécution de mes indications.

6.

ALLEMAGNE, ESPAGNE.

Traité concernant la cession à l'Allemagne des îles Carolines, Pellew et Mariannes; signé à Madrid, le 30 juin 1899.

Reichsanzeiger No. 152, 1898.

Treaty between Germany and Spain, ceding to Germany the Caroline, Pellew, and Mariana Islands, with the exception of the Island of Guam. — Signed ad Madrid, June 30, 1899.

(Translation.)

His Majesty the King of Spain, and in his name the Queen-Regent, and His Majesty the German Emperor, King of Prussia, with the desire of solemnly confirming the declaration relating to the Caroline, Pellew, and Mariana Islands, made at Madrid on the 12th February of this year, and in accordance with the constitutional authorization of the legislative bodies of the two countries have determined to conclude a Treaty, and have for this object appointed their Plenipotentiaries

For Spain: Señor Don Francisco Silvela, President of the Council of Ministers and Minister of State;

Vertrag zwischen dem Deutschen Reich und Spanien zur Bestätigung der am 12. Februar 1899 in Madrid unterzeichneten Erklärung, betr. die Inselgruppen der Karolinen, Palau und Marianen. Vom 30. Juni 1899.

(Deutscher Text.)

Seine Majestät der Deutsche Kaiser, König von Preussen, im Namen des Deutschen Reiches, und Ihre Majestät die Königin-Regentin von Spanien im Namen Ihres Sohnes, Seiner Majestät des Königs Don Alfonso XIII., von dem Wunsche geleitet, die am 12. Februar d. Js. in Madrid unterzeichnete Erklärung, betreffend die Inselgruppen der Karolinen, Palau und Marianen, feierlich zu bestätigen, haben, nachdem die gesetzgebenden Körperschaften beider Länder, soweit dies verfassungsmässig erforderlich ist, ihre Zustimmung erteilt haben, beschlossen, zu diesem Zweck einen Vertrag abzuschliessen, und haben zu Ihren Bevollmächtigten ernannt und zwar:

Seine Majestät der Deutsche Kaiser, König von Preussen, Allerhöchstseinen ausserordentlichen und bevollmächtigten Botschafter Herrn Joseph v. Radowitz

For Germany: Señor Don José de Radowitz, Ambassador Extraordinary and Plenipotentiary.

These having shown their full powers, which were found to be in good and due form, have agreed on the following Articles:

Art. I. Spain cedes to Germany the full sovereignty, over, and property of, the Caroline, Pellew, and Mariana Islands (except Guam), in return for a pecuniary indemnity of 25,000,000 pesetas.

II. Germany concedes to Spanish commerce and to Spanish agricultural establishments in the Caroline, Pellew, and Mariana Islands the same treatment and the same facilities as will be conceded to German commerce and to German agricultural establishments, and recognizes in these islands the same rights and the same liberties for Spanish religious orders as for German religious orders.

III. Spain will be allowed to establish and to keep, even in time of war, deposits of coal for her war and merchant fleets: one in the archipelago of the Carolines, another in the archipelago of the Pellew Islands, and a third in the archipelago of the Mariana Islands.

IV. The present Treaty will be considered ratified by the full powers granted to the Signatories, and will come into force on the day on which it is dated.

und Ihre Majestät die Königin-Regentin von Spanien allerhöchstihren Präsidenten des Ministerrates und Staatsminister Don Francisco Silvela,

welche nach gegenseitiger Mitteiluug ihrer in guter und gehöriger Form befundenen Vollmachten über nachstehende Artikel überein gekommen sind.

Artikel 1. Spanien tritt an Deutschland die volle Landeshoheit über die Karolineninseln mit den Palau und den Marianen, Guam ausgenommen, und das Eigentum an diesen Inseln gegen eine auf 25 Millionen Peseten festgesetzte Geldentschädigung ab.

Artikel 2. Deutschland gewährt dem spanischen Handel und den spanischen landwirtschaftlichen Unternehmungen auf den Karolinen, den Palau und den Marianen die gleiche Behandlung und die gleichen Erleichterungen, welche es dem deutschen Handel und den deutschen landwirtschaftlichen Unternehmungen dort gewähren wird, und gewährt auf den genannten Inseln den spanischen religiösen Ordensgesellschaften die gleichen Rechte und die gleichen Freiheiten wie den deutschen religiösen Ordensgesellschaften.

Artikel 3. Spanien wird ein Kohlendepot für die Kriegs- und Handelsmarine in dem Karolinen-Archipel, ein gleiches in dem Palau- und ein drittes in dem Marianen-Archipel errichten und auch in Kriegszeiten behalten könnten.

Artikel 4. Der gegenwärtige Vertrag gilt auf Grund der den Unterzeichneten erteilten Vollmachten als ratifiziert und tritt am Tage der Unterzeichnung in Kraft.

Zu Urkund dessen haben die beiderseitig Bevollmächtigten den gegenwärtigen Vertrag unterzeichnet und mit dem Abdruck ihrer Siegel versehen.

Ausgefertigt in doppelter Urschrift in Madrid, den 30. Juni 1899.

(L. S.) *Joseph von Radowitz.*
(L. S.) *Francisco Silvela.*

Sealed and done in duplicate, Madrid, the 30th June, 1899.

(L. S.) *Francisco Silvela.*
(L. S.) *Joseph von Radowitz.*

Die im vorstehenden Notenwechsel getroffene Vereinbarung wird, nachdem sie die verfassungsmässige Genehmigung gefunden hat und das im Notenwechsel erwähnte Abkommen über die Abtretung der Inseln im Stillen Ozean ratifiziert worden ist, mit Beginn des 1. Juli 1899 in beiden Ländern in Kraft treten.

7.

ALLEMAGNE.

Lettre patente concernant la protection exercée par l'Empire d'Allemagne sur les îles Carolines, Pellew et Mariannes; en date du 18 juillet 1899.

Reichs- und Staatsanzeiger 1899.

Allerhöchste Ordre, betr. die Erklärung des Schutzes über die Karolinen, Palau und Marianen. Vom 18. Juli 1899.

Wir Wilhelm, von Gottes Gnaden Deutscher Kaiser, König von Preussen etc., tun kund und fügen hiermit zu wissen:

Nachdem durch den am 30. Juni 1899 zwischen unserer Regierung und der Königlich Spanischen Regierung geschlossenen Vertrag die in diesem Vertrage näher bezeichneten Inselgruppen der Karolinen, Palau und Marianen an Deutschland abgetreten worden sind, nehmen Wir hiermit im Namen des Reiches dieses Inselgebiet vom Zeitpunkt der Übergabe an Unsere Behörden ab unter Unseren Kaiserlichen Schutz.

Urkundlich unter Unserer Höchsteigenhändigen Unterschrift und beigedrucktem Kaiserlichen Insiegel.

Gegeben Molde, an Bord meiner Yacht „Hohenzollern", den 18. Juli 1899.

gez. *Wilhelm*, I. R.

ggez. Graf Posadowsky.

8.

ESPAGNE, PÉROU.

Traité de Paix additionnel au Traité du 14 août 1879*); signé à Lima le 16 juillet 1897**).

(Traduction.)

Her Majesty the Queen-Regent of Spain, in the name of her august son Don Alfonso XIII, and his Exellency the President of the Republic of Peru, being desirous of strengthening still more the cordial relations of amity and good understanding happily existing between the two nations, of giving facilities to their respective citizens, or subjects, for the exercise of their professions, and of removing for the future every ground of discord and disagreement, have agreed to give a wider scope to the Treaty of Friendship signed at Paris on the 14th August 1879 and for that purpose have named as their Plenipotentiaries:

Her Majesty the Queen-Regent of Spain, Don Julio de Arellano, Her Envoy Extraordinary and Minister Plenipotentiary to Peru; and

His Exellency the President of the Republic of Peru, Dr. Don Enrique de la Riva Agüero, Minister of State for Foreign Affairs;

Who, having communicated to each other their respective full powers, which were found to be in good an due form, have agreed upon the following Articles:

Art. I. Every controversy or difference which may arise between Spain and Peru as regards the interpretation of Treaties in force at present or which may be so in the future shall be determined by the irrevocable decision of an arbitrator proposed and accepted by mutual consent. The differences which may arise concerning points not contemplated by the said Treaties or Agreements, shall likewise be submitted to arbitration, but should there be non-concurrence regarding the adoption of this course, owing to the questions being such as to affect the national sovereignty, or if, on the other hand, owing to their nature, they are incompatible with arbitration, both Governments shall be under the obligation in every such case to accept the mediation, or good offices of a friendly Government for the peaceful solution of every controversy. In every case of arbitration the High Contracting Parties shall establish by mutual consent, the procedure, terms, and formalities to be observed by the Judge and the parties during the course of the arbitration, and for the determination of the case submitted.

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*) V. **N. R. G.** 2e s. IX. 747.

**) Les ratifications ont été échangées à Lima, le 18 juin 1898.

II. The national status of Perovians or Spaniards shall be determined in each of the respective countries by its own legislation, as also the jurisdictional effects thereof, unless both Governments should hereafter enter into special Agreements of a reciprocal nature concerning such questions of nationality and naturalization.

The same rule shall obtain as regard corporations, whether they be mercantile firms or others recognized by law in either of the two countries, and domiciled and established therein. The national status of corporations is distinct from the individual nationality of the partners.

III. In the event of a Spaniard in Peru, or a Peruvian in Spain, taking part in internal questions or civil wars in either of the two States, he shall be treated, tried; and, should there be ground therefor, condemned in the same manner and by the same process of law, or before the same Tribunals, to which the natives, who may be in similar cicumstances, are amenable.

IV. The two Governments shall not hold each other responsible for damages, vexations, or exactions, which the natives of one of the two States may suffer on the territory of the other at the hands of revolutionists during an insurrection or civil war, or during seditions, or riots, or at the hands of tribes, or wild hordes, over whom the Government has no control, unless there may have been, in the opinion of its own Tribunals, fault or want of vigilance on the part of the autorities of the country. The Governments of Peru and Spain, shall not therefore hold each other responsible except for their own acts, or for those done by their agents in the exercise of their functions. Nevertheless it is understood that both Peruvians and Spaniards shall be entitled to the compensation, or the most favourable indemnities which the respective Governments may grant under said circumstances to their own citizens or other foreigners.

V. If a Spaniard in Peru or a Peruvian in Spain should take part in any sedition, rebellion, or civil war; if he should usurp political rights, or if he should undertake any office, employment or function, to which political authority or jurisdiction, is attached, he forfeits all claim to the exemptions, and to all rights enjoyed by foreigners, which Treaties or international law may give him, and he shall be on the same footing as the natives in respect to responsibility for his acts.

VI, Spaniards in Peru and Peruvians in Spain shall enjoy the same civil rights as citizens or subjects; and the penal laws of police or security shall be equally applicable to them. In both cases their property, rights, criminal responsibilities, and civil actions shall be protected, recognized, or dealt with by the competent Judicial and Administrative authorities who protect, recognize, or deal with those of the natives. The sentences, decrees, or legal decisions which may be pronounced as regards their petitions, complaints, or actions, and which may have quality in conformity with the appeals, processes, and proceedings allowed by local legislation, shall be binding in law, and carried into effect, in the same manner as when citizens of each country are dealt with. Spaniards in Peru or Peru-

vians in Spain shall not be entitled to diplomatic intervention except in the event of a manifest denial of justice, that is failure or negligence in the administration of it.

VII. The two High Contracting Parties in accordance with their respective laws reserve to themselves the right of nonadmittance to, or expulsion from their territory of persons who, owing to their vicious life or to their conduct, might be considered dangerous. The mode of expulsion which each of the two Governments may adopt, shall be communicated by it to the accredited Representive of the other in the country.

VIII. University or professional diplomas and certificates granted in either of the two countries to Peruvian citizens or Spaniards shall be reciprocally recognized as valid in the other, provided that their authenticity, and the identity of the holders be established. The authenticity shall be established by the legalization at the proper time and in the usual manner and the personal identity proved by a certificate issued by the respective Legation, or in default thereof by any Consular authority residing in the country in which the certificate is issued and which shall also be legalized.

By means of these formalities, and providing that both Governments communicate the programmes of studies to each other, or come to an arrangement respecting any further administrative details, the studies commenced in the colleges, universities, or special schools of either country may be continued in those of the other, or the professions to which the certificates refer, may be exercised, it being understood that the parties interested are subject to all regulations, fees, and duties, to which the natives themselves are subject.

IX. The stipulations of this Treaty neither alter nor modify those in force between Peru and Spain by virtue of existing Treaties regarding matters not comprised herein.

X. The present Treaty shall be ratified in accordance with the respective laws, and the ratifications exchanged at Lima as soon as possible.

It shall remain in force for one year from the day on which one of the High Contracting Parties may denounce it, either in whole or in part.

In faith whereof we, the Undersigned, have signed it in duplicate at Lima, the 16th day of July 1897.

(L. S.) *E. de la Riva Agüero.*
(L. S.) *Julio de Arellano.*

9.

ETATS-UNIS.

Résolution concernant l'annexion des îles de Hawaï; prise à Washington, le 7 juillet 1898.

State Papers. T. XCII.

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its Constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiin Islands and their dependencies, and also to cede and transfer tho the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbours, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining:

Therefore

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled:

That said cession is accepted, ratified, and confirmed, and that the said Hawaiin Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States, and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

The existing laws ofs the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: Provided that all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the Local Government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

Until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing Government in said islands shall be vested in such person or persons, and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

The existing Treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such Treaties as may exist, or as may be hereafter concluded, between the United States

and such foreign nations. The municipal legislation of the Hawaiian Islands, not enacted for the fulfilment of the Treaties so extinguished, and not inconsistent with this Joint Resolution, nor contrary to the Constitution of the United States nor to any existing Treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine.

Until legislation shall be enacted extending the United States' customs laws and regulations to the Hawaiian Islands, the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

The Public Debt of the Republic of Hawaii lawfully existing at the date of the passage of this Joint Resolution, including the amounts due to depositors in the Hawaiin Postal Savings Bank, is hereby assumed by the Government of the United States; but the liability of the United States in this regard shall in no case exceed 4,000,000 dollars. So long, however, as the existing Government and the present commercial relations of the Hawaiian Islands are continued as hereinbefore provided, said Government shall continue to pay the interest on said debt.

There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

The President shall appoint five Commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as son as reasonably practicable, recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary or proper.

Sec. 2. That the Commissioners hereinbefore provided for shall be appointed by the President, by and with the advice and consent of the Senate.

Sec. 3. That the sum of 100,000 dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated, and to be immediately available, to be expended at the discretion of the President of the United States of America, for the purpose of carrying this Joint Resolution into effect.

Approved, July 7, 1898.

10.

ESPAGNE, ETATS-UNIS.

Traité de Paix; signé à Paris, le 10 décembre 1898*).

State Papers. T. XC.

The United States of America and Her Majesty the Queen-Regent of Spain, in the name of her august son, Don Alfonso XIII, desiring to end the state of war now existing between the two countries, have for that purpose appointed as Plenipotentiaries:

The President of the United States, William R. Day, Cushman K. Davis, William P. Frye, George Gray, and Whitelaw Reid, citizens of the United States;

And Her Majesty the Queen-Regent of Spain, Don Eugenio Montero Ríos, President of the Senate; Don Buenaventura de Abarzuza, Senator of the Kingdom and ex-Minister of the Crown; Don José de Garnica, Deputy to the Cortes and Associate Justice of the Supreme Court; Don Wenceslao Ramirez de Villa-Urrutia, Envoy Extraordinary and Minister Plenipotentiary at Brussels; and Don Rafael Cerero, General of Division;

Who, having assembled in Paris, and having exchanged their full powers, which were found to be in due and proper form, have, after discussion of the matters before them, agreed upon the following Articles:

Art. I. Spain relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the facts of its occupation, for the protection of live and property.

II. Spain cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the Island of Guam in the Marianas or Ladrones.

III. Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line:

A line running from west to east along or near the 20th parallel of north latitude, and through the middle of the navigable channel of Bachi, from the 118th to the 127th degree meridian of longitude east of Greenwich, thence along the 127th degree meridian of longitude east of Greenwich to the parallel of 4° 45′ north latitude, thence along the parallel of 4° 45′ north latitude to its intersection with the meridian of longitude 119° 35′ east of Greenwich, thence along the meridian of longitude 119° 35′ east

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*) Les ratifications ont été échangées à Washington, le 11 avril 1899.

of Greenwich to the parallel of latitude 7° 40′ north, thence along the parallel of latitude 7° 40′ north to its intersection with the 116th degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the 10th degree parallel of north latitude with the 118th degree meridian of longitude east of Greenwich, and thence along the 118th degree meridian of longitude east of Greenwich to the point of beginning.

The United States will pay to Spain the sum of 20,000,000 dollars within three months after the exchange of the ratifications of the present Treaty.

IV. The United States will, for the term of ten years from the date of the exchange of the ratifications of the present Treaty, admit Spanish ships and merchandize to the ports of the Philippine Islands on the same terms as ships and merchandize of the United States.

V. The United States will, upon the signature of the present Treaty, send back to Spain, at its own cost, the Spanish soldiers taken as prisoners of war on the capture of Manila by the American forces. The arms of the soldiers in question shall be restored to them.

Spain will, upon the exchange of the ratifications of the present Treaty, proceed to evacuate the Philippines, as well as the Island of Guam, on terms similar to those agreed upon by the Commissioners appointed to arrange for the evacuation of Porto Rico and other islands in the West Indies, under the Protocol of the 12th August 1898, which is to continue in force till its provisions are completely executed.

The time within which the evacuation of the Philippine Islands and Guam shall be completed shall be fixed by the two Governments. Stands of colours, uncaptured war-vessels, small-arms, guns of all calibres, with their carriages and accessories, powder, ammunition, live-stock, and materials and supplies of all kinds, belonging to the land and naval forces of Spain in the Philippines and Guam, remain the property of Spain. Pieces of heavy ordnance, exclusive of field artillery, in the fortifications and coast defences, shall remain in their emplacements for the term of six months, to be reckoned from the exchange of ratifications of the Treaty; and the United States may, in the meantime, purchase such material from Spain, if a satisfactory agreement between the two Governments on the subject shall be reached.

VI. Spain will, upon the signature of the present Treaty, release all prisoners of war, and all persons detained or imprisoned for political offences, in connection with the insurrections in Cuba and the Philippines and the war with the United States.

Reciprocally, the United States will release all persons made prisoners of war by the American forces, and will undertake to obtain the release of all Spanish prisoners in the hands of the insurgents in Cuba and the Philippines.

The Government of the United States will at its own cost return to Spain, and the Government of Spain will at its own cost return to

the United States, Cuba, Porto Rico, and the Philippines, according to the situation of their respective homes, prisoners released or caused to be released by them, respectively, under this Article.

VII. The United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present Treaty, including all claims for indemnity for the cost of the war.

The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this Article.

VIII. In conformity with the provisions of Articles I, II and III of this Treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other islands in the West Indies, in the Island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways, and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

The aforesaid relinquishment or cession, as the case may be, includes all documents exclusively referring to the sovereignty relinquished or ceded that may exist in the archives of the Peninsula. Where any document in such archives only in part relates to said sovereignty, a copy of such part will be furnished whenever it shall be requested. Like rules shall be reciprocally onserved in favour of Spain in respect of documents in the archives of the islands above referred to.

In the aforesaid relinquishment or cession, as the case may be, are also included such rights as the Crown of Spain and its authorities posses in respect of the official archives and records, executive as well as judicial, in the islands above referred to, which relate to said islands or the rights and property of their inhabitants. Such archives and records shall be carefully preserved, and private persons shall without distinction have the right to require, in accordance with law, authenticated copies of the contracts, wills, and other instruments forming part of notarial protocols or files, or which may be contained in the executive or judicial archives, be the latter in Spain or in the islands aforesaid.

IX. Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present Treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, re-

taining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a Court of record, within a year from the date of the exchange of ratifications of this Treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

X. The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

XI. The Spaniards residing in the territories over which Spain by this Treaty cedes or relinquishes her sovereignty shall be subject in matters civil as well as criminal to the jurisdiction of the Courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and they shall have the right to appear before such Courts, and to pursue the same course as citizens of the country to which the Courts belong.

XII. Judicial proceedings pending at the time of the exchange of ratifications of this Treaty in the territories over which Spain relinquishes or cedes her sovereignty shall be determined according to the following rules:

1. Judgments rendered either in civil suits between private individuals, or in criminal matters, before the date mentioned, and with respect to which there is no recourse or right of review under the Spanish law, shall be deemed to be final, and shall be executed in due form by competent authority in the territory within which such judgments should be carried out.

2. Civil suits between private individuals which may on the date mentioned be undetermined shall be prosecuted to judgment before the Court in which they may then be pending or in the Court that may be substituted therefor.

3. Criminal actions pending on the date mentioned before the Supreme Court of Spain against citizens of the territory which by this Treaty ceases to be Spanish shall continue under its jurisdiction until final judgment; but, such judgment having been rendered, the execution thereof shall be committed to the competent authority of the place in which the case arose.

XIII. The rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba, and in Porto Rico, the Philippines and other ceded territories, at the time of the exchange of the

ratifications of this Treaty, shall continue to be respected. Spanish scientific, literary, and artistic works, not subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories, fo the period of ten years, to be reckoned from the date of the exchange of the ratifications of this Treaty.

XIV. Spain shall have the power to establish Consular officers in the ports and places of the territories, the sovereignty over which has been either relinquished or ceded by the present Treaty.

XV. The Government of each country will, for the term of ten years, accord to the merchant-vessels of the other country the same treatment in respect of all port charges, including entrance and clearance dues, light dues, and tonnage duties, as it accords to its own merchant-vessels, not engaged in the coastwise trade.

This Article may at any time be terminated on six months' notice given by either Government to the other.

XVI. It is understood that any obligations assumed in this Treaty by the United States with respect to Cuba are limited to the time of its occupancy thereof; but it will upon the termination of such occupancy advise any Government established in the island to assume the same obligations.

XVII. The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Majesty the Queen-Regent of Spain, and the ratifications shall be exchanged at Washington within six months from the date hereof, or earlier if possible.

In faith whereof we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate at Paris, the 10th day of December, in the year of our Lord 1898.

(L. S.) *William R. Day.*
(L. S.) *Cushman K. Davis.*
(L. S.) *Wm. P. Frye.*
(L. S.) *Geo. Gray.*
(L. S.) *Whitelaw Reid.*
(L. S.) *Eugenio Montero Rios.*
(L. S.) *B. de Abarzuza.*
(L. S.) *J. de Garnica.*
(L. S.) *W. R. de Villa Urrutia.*
(L. S.) *Rafael Cerero.*

11.

ETATS-UNIS D'AMÉRIQUE, CUBA.

Traité concernant les relations politiques et diplomatiques entre les Parties contractantes; signé à la Havane le 22 mai 1903*).

Publication officielle des Etats-Unis d'Amérique.

Whereas the Congress of the United States of America, by an Act approved March 2, 1901, provided as follows:

Provided further, That in fulfillment of the declaration contained in the joint resolution approved April twentieth, eighteen hundred and ninety-eight, entitled, „For the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba, and to with (draw) its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect," the President is hereby authorized to „leave the government and control of the island of Cuba to its people" so soon as a government shall have been established in said island under a constitution which, either as a part thereof or in an ordinance appended thereto, shall define the future relations of the United States with Cuba, substantially as follows:

„I. That the government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise, lodgement in or control over any portion of said island."

„II. That said government shall not assume or contract any public debt, to pay the interest upon which, and to make reasonable sinking fund provision for the ultimate discharge of which, the ordinary revenues of the island, after defraying the current expenses of government shall be inadequate."

„III. That the government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba."

„IV. That all Acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected."

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*) L'échange des ratifications a eu lieu à Washington le 1er juillet 1904.

V. That the government of Cuba will execute, and as far as necessary extend, the plans already devised or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the southern ports of the United States and the people residing therein."

„VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty."

VII. That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points to be agreed upon with the President of the United States.

VIII. That by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States."

Whereas the Constitutional Convention of Cuba, on June twelfth, 1901, adopted a Resolution adding to the Constitution of the Republic of Cuba which was adopted on the twenty-first of February 1901, an appendix in the words and letters of the eight enumerated articles of the above cited act of the Congress of the United States;

And whereas, by the establishment of the independent and sovereign government of the Republic of Cuba, under the constitution promulgated on the 20th of May, 1902, which embraced the foregoing conditions, and by the withdrawal of the Goverment of the United States as an intervening power, on the same date, it becomes necessary to embody the above cited provisions in a permanent treaty between the United States of America and the Republic of Cuba;

The United States of America and the Republic of Cuba, being desirous to carry out the foregoing conditions, have for that purpose appointed as their plenipotentiaries to conclude a treaty to that end,

The President of the United States of America, Herbert G. Squiers, Envoy Extraordinary and Minister Plenipotentiary at Havana,

And the President of the Republic of Cuba, Carlos de Zaldo y Beurmann, Secretary of State and Justice, —who after communicating to each other their full powers found in good and due form, have agreed upon the following articles:

Article I.

The Government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or

navel purposes, or otherwise, lodgment in or control over any portion of said island.

Article II.

The Government of Cuba shall not assume or contract any public debt to pay the interest upon which, and to make reasonable sinking-found provision for the ultimate discharge of which, the ordinary revenues of the Island of Cuba after defraying the current expenses of the Government, shall be inadequate.

Article III.

The government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba.

Article IV.

All acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected.

Article V.

The Government of Cuba will execute, and, as far as necessary, extend the plans already devised, or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the Southern ports of the United States and the people residing therein.

Article VI.

The Island of Pines shall be omitted from the boundaries of Cuba specified in the Constitution, the title thereto being left to future adjustment by treaty.

Article VII.

To enable the United States to maintain the independence of Cuba and to protect the people thereof, as well as for its own defense, the Government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations, at certain specified points, to be agreed upon with the President of the United States.

Article VIII.

The present Convention shall be ratified by each party in conformity with the respective Constitutions of the two countries, and the ratifications shall be exchanged in the City of Washington within eight months from this date.

In witness whereof, we the respective Plenipotentiaries, have signed the same in duplicate, in English and Spanish, and have affixed our respective seals at Havana, Cuba, this twenty-second day of May, in the year mineteen hundred and three.

H. G. Squiers. (Seal.)
Carlos de Zaldo. (Seal.)

12.

ÉTATS-UNIS, ESPAGNE.

Traité concernant la Cession de l'Archipel des Philippines, conformément à l'Article III du traité de paix du 10 décembre 1898; signé à Washington, le 7 novembre 1900.*)

The United States of America and Her Majesty the Queen-Regent of Spain, in the name of her august son, Don Alfonso XIII, desiring to remove any ground of misunderstanding growing out of the interpretation of Article III of the Treaty of Peace concluded between them at Paris, the 10th day of December 1898 whereby Spain cedes to the United States the archipelago known as the Phillippine Islands, and comprehending the islands lying within certain described lines, and having resolved to conclude a Treaty to accomplish that end, have for that purpose appointed as their respective Plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States; and

Her Majesty the Queen-Regent of Spain, the Duke de Arcos, Envoy Extraordinary and Minister Plenipotentiary of Spain to the United States;

Who, having met in the city of Washington, and having exchanged their full powers, which were found to be in due and proper form, have agreed upon the following Sole Article:

Sole Article. Spain relinquishes to the United States all title and claim of title which she may have had at the time of the conclusion of the Treaty of Peace of Paris, to any and all islands belonging to the Philippine Archipelago, lying outside the lines described in Article III of that Treaty, and particularly to the Islands of Cagayan Sulú and Sibutú and their dependencies, and agrees that all such islands shall be comprehended in the cession of the archipelago as fully as if they had been expressly included within those lines.

The United States, in consideration of this relinquishment, will pay to Spain the sum of 100,000 dollars within six months after the exchange of the ratifications of the present Treaty.

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*) Les ratifications ont été échangées à Washington, le 23 mars 1901.

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Majesty the Queen-Regent of Spain, after approval by the Cortes of the Kingdom, and the ratifications shall be exchanged at Washington as soon as possible.

In faith whereof we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate, at the city of Washington, the 7th day of November, in the year of Our Lord 1900.

(L.S.) *John Hay.*
(L.S.) *Arcos.*

13.

ÉTATS-UNIS D'AMÉRIQUE, CUBA.

Convention supplémentaire destinée à prolonger le terme pour l'échange des ratifications du traité de paix du 22 mai 1903; signée à Washington, le 20 janvier 1904*).

Publication officielle des États-Unis d'Amérique.

The United States of America and the Republic of Cuba, considering it expedient to prolong the period within which, by Article VIII of the treaty signed by their respective plenipotentiaries on May 22, 1903, embodying the provisions defining the future relations of the United States with Cuba, contained in the act of Congress of the United States approved March 2, 1901, the exchange of ratifications of the said treaty shall take place, have for that purpose appointed their respective Plenipotentiaries, namely:

The President of the United States of America, John Hay, Secretary of State of the United States; and

The President of Cuba, Gonzalo de Quesada, Envoy Extraordinary and Minister Plenipotentiary of Cuba at Washington;

who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following additional article to be taken as part of said treaty.

Sole Article.

The respective ratifications of the said treaty shall be exchanged as soon as possible, and within six months from January 21, 1904.

Done in duplicate at Washington, in the English and Spanish languages, this 20th day of January A. D. 1904.

John Hay (Seal)
Gonzalo de Quesada (Seal)

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*) Les ratifications ont été échangées à Washington le 1er juillet 1904.

14.

COSTA-RICA, GRANDE RÉPUBLIQUE CENTRALE D'AMÉRIQUE.

Traité de Paix; signé à Cape Blanco, le 26 avril 1898.

Gazette de Costa Rica. Mai 1898.

(Traduction.)

In neutral waters of the Pacific Ocean, on board of the United States' man-of-war Alert, generously offered for this act by his Excellency William L. Merry, Minister Plenipotentiary of the United States of America to the Government of Costa Rica, being off Cape Blanco in 9° 26′ 45″ north latitude, and 85° 3′ 30″ west longitude:

The Undersigned, Ricardo Pacheco, Plenipotentiary of the Republic of Costa Rica, Manuel Coronel Matus, Plenipotentiary of the Greater Republic of Central America, and Francisco Lainfiesta, Plenipotentiary of the Republic of Guatemala, as friendly mediator,

Having communicated to each other their full powers, found to be in due and proper form, hereby declare in the most solemn manner that

The respective Parties having already agreed to settle in a friendly manner the misunderstandings which have arisen between the Republics of Costa Rica and the State of Nicaragua, of the Greater Republic of Central America — misunderstandings which have made war dangerously imminent — and being desirous of carrying into effect the civilized and honourable aims which have brought about the present meeting;

They formulate and agree to the following fraternal and pacific settlement, in virtue of which from this moment all hostile intent by recourse to arms will cease on both sides, and that good understanding and harmony, which the well-being of two neighbouring peoples and the honour of Central America demand, is re-established;

They therefore declare and agree:

Art. I. The Republic of Costa Rica and the Greater Republic of Central America respectively, deferring to the friendly request of the Government of the Guatemala, and to the just claims of the mutual interests of Central America, no less than to the welfare of the neighbouring peoples of Costa Rica and Nicaragua (to-day in discord), freely accept the recourse to peaceful and friendly agreement in order to put an end to the conflict which has led them to take up arms.

II. In consequence, the forces of both Parties picketed on the frontier, with the exception of the small garrisons which it is customary to keep in times of peace, will be simultaneously concentrated and disbanded by both Governments, as soon as, and on the day which, the mediating Minister may elect. This he will communicate by telegraph as soon as he disembarks after concluding and signing this Convention. Further, this act will imply

that the two nations again enter upon their normal state of tranquillity, and the cultivation of those friendly relations which have been temporarily interrupted by the threatened war.

III. Recurring then to the civilized and enlightened medium of arbitration, recommended even by military nations for the settlement of international disputes, the High Contracting Parties agree to refer their mutual claims, and the proofs by which they support them, to a Tribunal of Arbitration, composed of three Central Americans: one to be named by the Republic of Costa Rica, one by the Greater Republic of Central America, and the third by the Republic of Guatemala, in its character of friendly mediator.

IV. The Arbitrators shall meet in the capital of the Republic of Guatemala within one month from the ratification of this Convention by both Parties, to organize themselves conveniently, and to proceed to discharge the duties committed to them, being governed in their conduct of the arbitration proceedings by the following rules:

1. Within a month from the installation of the Tribunal, the Contracting Parties, through their Representatives, will present in writing and with full details their respective protests and claims.

2. The day the term fixed by the previous rule expires, the Arbitrators will hand to each Representative of the Signatory Parties an exact copy of the contrary demands which have been submitted to them, in order that within a month from that date they may present their reply.

3. This term being passed, the Tribunal will grant the Parties one month more in which to present their proofs, whether any replies have been handed in or no.

4. Within one month from the expiration of this last term the Tribunal will give its verdict.

5. The Tribunal of Arbitrators, in any stage of the inquiry, at the petition of either of the Parties or officially, may request either of the Parties to produce documents, data, or information which may be asked for, or considered necessary to have on hand.

The Tribunal, with the consent of both Parties, may shorten or lengthen the terms indicated, either to bring the inquiry to a quicker termination or to throw greater light on the facts.

V. The claims which either Party may make, whatever their character or extent, will be freely submitted to the Arbitrating Tribunal, that it may consider and pass its verdict upon them according to international law, as it may consider just and equitable.

VI. Both Parties declare that the question of limits (frontier boundaries), settled by the Treaty of the 15th April, 1858, the arbitration decision of President Cleveland, and the Convention of San Salvador of 1896, will not form part of the claims to be laid before the Arbitrators.

VII. The Judges of this Tribunal will try the questions submitted to them, and pass their verdict thereon, in the character not only of Arbitrators, but also as peacemakers, allowing that feeling of charity to

enter into their counsels which should reign where vexatious incidents have occurred between brothers, and taking into account how greatly a prompt settlement, dictated by friendship, will redound to the benefit of the mutual interests of Central America.

Both Contracting Parties bind themselves by the most solemn obligations to accept and carry out the findings of the Arbitrators in that which relates to each without any reservations whatever.

VIII. A definite Treaty of Peace and Friendship will also be signed in the city of Guatemala within the time which the Governments interested may fix, between Plenipotentiaries of the Republic of Costa Rica and of the Greater Republic of Central America, one for each Party, and a third as mediator to be appointed by the Government of Guatemala.

Such conditions and obligations will be imposed by this Treaty as to best insure a cordial understanding between the peoples of Costa Rica and Nicaragua of a stable and solid character, and such as to far remove all cause of difference, so that peace and quiet, which these peoples should enjoy, may not be again disturbed as on this occasion.

Further, in this compact will be included a solemn undertaking of both Parties not to take up arms to settle their differences until they have appealed to the beneficent measure of arbitration.

IX. The Mediator Plenipotentiary named by Guatemala untertakes to solicit his Governement's efficient guarantee for fulfilment by both Parties of obligations contracted by this Treaty.

X. This Convention will at once be submitted to the Legislatures of the Republic of Costa Rica and of the State of Nicaragua, to obtain the approval of those high bodies to the referring of the respective protests and claims to arbitration, that without delay, so soon as this superior authorization is vouchsafed, the execution of the several Articles of this Convention may be proceeded with.

XI. The Representatives of Costa Rica and of the Greater Republic, in the name of their Governments, propose a vote of thanks to the Government of Guatemala for its efficient co-operation in bringing about this friendly understanding, and to its worthy Representative, the honourable Minister Lainfiesta, who has so nobly interpreted the fraternal sentiments of his Government.

In witness whereof, and in sign of entire agreement, we sign and seal three copies of this same tenour, as before said, on board the man-of-war of the United States Alert, and in presence of her Captain, E. H. C. Leutze, who also signs, certifying the position of the ship in neutral waters of the Pacific Ocean, at 4 o'clock P. M. of th 26th day of April, of the year 1898.

(L. S.) *Ricardo Pacheco.*
(L. S.) *M. C. Matus.*
(L. S.) *Francisco Lainfiesta.*
E. H. C. Leutze, Commander,
United States' Navy.

15.

GRANDE-BRETAGNE, CHINE.

Echange de notes concernant la non-aliénation de la région du Yang-Tsze; signées à Péking, du 9/11 février 1898.

Parliamentary Papers. Présented to both Houses of Parliament by Command of Her Majesty. July 1898. China No. 2 1898.

Sir C. MacDonald to the Marquess of Salisbury.
(Received April 13.)

(Extract.) Peking, February 20, 1898.

At my interview with the Ministers of the Tsung-li Yamên on the 9th instant, I produced a draft of the note I intended addressing to them with regard to non-alienation of the Yang-tsze region. This was accepted with little demur, with the insertion of the words "now entirely hers", which, as recording an undeniable fact, I agreed to put in. Copies of the notes subsequently exchanged are inclosed.

Inclosure 1.

Sir C. MacDonald to the Tsung-li Yamên.

MM. les Ministres,

Your Highnesses and your Excellencies have more than once intimated to me that the Chinese Government were aware of the great importance that has always been attached by Great Britain to the retention in Chinese possession of the Yang-tsze region, now entirely hers, as providing security for the free course and development of trade.

I shall be glad to be in a position to communicate to Her Majesty's Government a definite assurance that China will never alienate any territory in the provinces adjoining the Yang-tsze to any other Power, whether under lease, mortgage, or any other designation. Such an assurance is in full harmony with the observations made to me by your Highnesses and your Excellencies.

I avail, &c.
(Signed) *Claude M. MacDonald.*

Inclosure 2.

The Tsung-li Yamên to Sir C. MacDonald.

Kuang Hsü, 24th year, 1st moon, 21st day
(Translation.) (February 11, 1898).

The Yamên have the honour to acknowledge the receipt of the British Minister's despatch of the 9th February, stating that the Yamên had more

than once intimated to him that the Chinese Government were aware of the great importance that has always been attached by Great Britain to the retention in Chinese possession of the Yang-tsze region, now entirely hers, as providing security for the free course and development of trade. The British Minister would be glad to be in a position to communicate to Her Majesty's Government a definite assurance that China would never alienate (any territory) in the provinces adjoining the Yang-tsze to any other Power, whether under lease, mortgage, or any other designation.

The Yamên have to observe that the Yang-tsze region is of the greatest importance as concerning the whole position (or interests) of China, and it is out of the question that territory (in it) should be mortgaged, leased, or ceded to another Power. Since Her Britannic Majesty's Government has expressed its interests (or anxiety), it is the duty of the Yamên to address this note to the British Minister for communication to his Government.

They avail themselves, &c.

16.

RUSSIE, JAPON.

Arrangement concernant les affaires de Corée; signé à Tokio, le 13/25 avril 1898.

State Papers. V. XCII.

Protocole.

Le Conseiller d'Etat Actuel et Chambellan Baron Rosen, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur de Toutes les Russies, et le Baron Nissi, Ministre des Affaires Étrangères de Sa Majesté l'Empereur du Japon, afin de donner suite à l'Article IV du Protocole signé à Moscou le $\frac{28 \text{ mai}}{9 \text{ juin}}$ 1896, entre le Secrétaire d'Etat Prince Lobanow et le Maréchal Marquis Yamagata, et dûment autorisés à cet effet, sont convenus des Articles suivants:

Art. 1. Les Gouvernements Impériaux de Russie et du Japon reconnaissent définitivement la souveraineté et l'entière indépendance de la Corée et s'engagent mutuellement à s'abstenir de toute ingérence directe dans les affaires intérieures de ce pays.

2. Désirant écarter toute cause possible de malentendus dans l'avenir, les Gouvernements Impériaux de Russie et du Japon s'engagent mutuellement, dans le cas où la Corée aurait recours au conseil et à l'assistance, soit de la Russie, soit du Japon, à ne prendre aucune mesure quant à la nomination d'instructeurs militaires et de conseillers financiers, sans arriver préalablement à un accord mutuel à ce sujet.

3. Vu le large développement qu'ont pris les entreprises commerciales et industrielles du Japon en Corée, ainsi que le nombre considérable de sujets Japonais résidant dans ce pays, le Gouvernement Russe n'entravera point le développement des relations commerciales et industrielles entre le Japon et la Corée.

Fait à Tôkiô en double expédition, le $\frac{13}{25}$ avril 1898.

(L. S.) *Rosen.*
(L. S.) *Nissi.*

17.

GRANDE-BRETAGNE, CHINE.

Convention concernant l'extension du territoire de Hong-Kong; signée à Péking, le 9 juin 1898*).

Treaty Series. No. 16.

Whereas it has for many years past been recognized that an extension of Hong Kong territory is necessary for the proper defence and protection of the Colony,

It has now been agreed between the Governments of Great Britain and China that the limits of British territory shall be enlarged under lease to the extent indicated generally on the annexed map. The exact boundaries shall be hereafter fixed when proper surveys have been made by officials appointed by the two Governments. The term of this lease shall be ninety-nine years.

It is at the same time agreed that within the city of Kowloon the Chinese officials now stationed there shall continue to exercise jurisdiction except so far as may be inconsistent with the military requirements for the defence of Hong Kong. Within the remainder of the newly-leased territory Great Britain shall have sole jurisdiction. Chinese officials and people shall be allowed as heretofore to use the road from Kowloon to Hsinan.

It is further agreed that the existing landing-place near Kowloon city shall be reserved for the convenience of Chinese men-of-war, merchant and passenger vessels, which may come and go and lie there at their pleasure; and for the convenience of movement of the officials and people within the city.

When hereafter China constructs a railway to the boundary of the Kowloon territory under British control, arrangements shall be discussed.

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*) Les ratifications ont été échangées à Londres le 6 août 1898.

It is further understood that there will be no expropriation or expulsion of the inhabitants of the district included within the extension, and that if land is required for public offices, fortifications, or the like official purposes, it shall be bought at a fair price.

If cases of extradition of criminals occur, they shall be dealt with in accordance with the existing Treaties between Great Britain and China and the Hong Kong Regulations.

The area leased to Great Britain, as shown on the annexed map, includes the waters of Mirs Bay and Deep Bay, but it is agreed that Chinese vessels of war, whether neutral or otherwise, shall retain the right to use those waters.

This Convention shall come into force on the first day of July, eighteen hundred and ninety-eight, being the thirteenth day of the fifth moon of the twenty-fourth year of Kuang Hsü. It shall be ratified by the Sovereigns of the two countries, and the ratifications shall be exchanged in London as soon as possible.

In witness whereof the Undersigned, duly authorized thereto by their respective Governments, have signed the present Agreement.

Done at Peking in quadruplicate (four copies in English and four in Chinese) the ninth day of June, in the year of our Lord eighteen hundred and ninety-eight, being the twenty-first day of the fourth moon of the twenty-fourth year of Kuang Hsü.

(L. S.) *Claude M. Mac Donald.*
(L. S.) (Seal of the Chinese Plenipotentiary.)

18.

GRANDE-BRETAGNE, CHINE.

Convention concernant la baie de Wei-hai-wei; signée à Péking, le 1er juillet 1898.*)

Treaty Series Nr. 14. 1898.

In order to provide Great Britain with a suitable naval harbour in North China, and for the better protection of British commerce in the neighbouring seas, the Government of His Majesty the Emperor of China agree to lease to the Government of Her Majesty the Queen of Great Britain and Ireland Wei hai wei, in the Province of Shantung, and the adjacent waters, for so long a period as Port Arthur shall remain in the occupation of Russia.

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*) Les ratifications ont été échangées à Londres le 5 octobre 1898.

The territory leased shall comprise the Island of Liu Kung, and all the islands in the Bay of Wei hai wei, and a belt of land 10 English miles wide along the entire coast-line of the Bay of Wei hai wei. Within the above-mentioned territory leased Great Britain shall have sole jurisdiction.

Great Britain shall have in addition the right to erect fortifications, station troops, or take any other measures necessary for defensive purposes at any points on or near the coast of the region east of the meridian, 121° 40′ east of Greenwich, and to acquire on equitable compensation within that territory such sites as may be necessary for water supply, communications, and hospitals. Within that zone Chinese administration will not be interfered with, but no troops other than Chinese or British shall be allowed therein.

It is also agreed that within the walled city of Wei hai wei Chinese officials shall continue to exercise jurisdiction, except so far as may be inconsistent with naval and military requirements for the defence of the territory leased.

It is further agreed that Chinese vessels of war, whether neutral or otherwise, shall retain the right to use the waters herein leased to Great Britain.

It is further understood that there will be no expropriation or expulsion of the inhabitants of the territory herein specified, and that if land is required for fortifications, public offices, or any official or public purpose, it shall be bought at a fair price.

This Convention shall come into force on signature. It shall be ratified by the Sovereigns of the two countries, and the ratifications shall be exchanged in London as soon as possible,

In witness whereof the Undersigned, duly authorized thereto by their respective Governments, have signed the present Agreement.

Done at Peking in quadruplicate (four copies in English and four in Chinese), the 1th day of July, in the year of our Lord 1898, being the 13th day of the 5th moon of the 24th year of Kuang Hsü.

(L. S.) *Claude M. MacDonald.*

(L. S.) (Seal of the Chinese Plenipotentiary.)

19.

GRANDE-BRETAGNE, ALLEMAGNE.

Arrangement concernant le maintien de l'intégrité territoriale de la Chine; signé à Londres, le 16 octobre 1900.

Treaty Series Nr. 1. 1901.

The Marquess of Salisbury to Count Hatzfeldt.

Foreign Office, October 16, 1900.

Your Excellency,

I have the honour to inform you that Her Majesty's Government approve the Agreement, annexed hereto, which has been negotiated between your Excellency and myself with regard to the principles on which the mutual policy of Great Britain and Germany in China should be based.

I have, &c.
(Signed) *Salisbury.*

Inclosure.

Agreement signed on the 16th October, 1900.

Her Britannic Majesty's Government and the Imperial German Government being desirous to maintain their interests in China and their rights under existing Treaties, have agreed to observe the following principles in regard to their mutual policy in China:

1. It is a matter of joint and permanent international interest that the ports on the rivers and littoral of China should remain free and open to trade and to every other ligitimate form of economic activity for the nationals of all countries without distinction; and the two Governments agree on their part to uphold the same for all Chinese territory as far as they can exercise influence.

2. Her Britannic Majesty's Government and the Imperial German Government will not, on their part, make use of the present complication to obtain for themselves any territorial advantages in Chinese dominions, and will direct their policy towards maintaining undiminished the territorial condition of the Chinese Empire.

3. In case of another Power making use of the complications in China in order to obtain under any form whatever such territorial advantages, the two Contracting Parties reserve to themselves to come to a preliminary understanding as to the eventual steps to be taken for the protection of their own interests in China.

4. The two Governments will communicate this Agreement to the other Powers interested, and especially to Austria-Hungary, France, Italy, Japan, Russia, and the United States of America, and will invite them to aceept the principles recorded in it.

Count Hatzfeldt to the Marquess of Salisbury —
(Received October 16.)

Kaiserlich Deutsche Botschaft, London,
den 16. October 1900.

Milord,

Eurer Excellenz habe ich die Ehre ganz ergebenst zu benachrichtigen, dass meine Regierung den nachfolgenden zwischen Euerer Excellenz und mir vereinbarten Punkten ihre Zustimmung erteilt hat:

„Die Kaiserlich Deutsche Regierung und die Königlich Grossbritannische Regierung, von dem Wunsche geleitet, ihre Interessen in China und ihre Rechte aus bestehenden Verträgen aufrechtzuerhalten, sind übereingekommen, für ihre beiderseitige Politik in China nachstehende Grundsätze zu beobachten:

„1. Es entspricht einem gemeinsamen und dauernden internationalen Interesse, dass die an den Flüssen und an der Küste Chinas gelegenen Häfen dem Handel und jeder sonstigen erlaubten wirtschaftlichen Tätigkeit für die Angehörigen aller Nationen ohne Unterschied frei und offen bleiben; und die beiden Regierungen sind mit einander einverstanden, dies ihrerseits für alles Chinesische Gebiet zu beobachten, wo sie einen Einfluss ausüben können.

„2. Die Kaiserlich Deutsche Regierung und die Königlich Grossbritannische Regierung wollen ihrerseits die gegenwärtige Verwickelung nicht benutzen, um für sich irgend welche terrritorialen Vorteile auf Chinesischem Gebiet zu erlangen, und werden ihre Politik darauf richten, den Territorial-Bestand des Chinesischen Reichs unvermindert zu erhalten.

3. Sollte eine andere Macht die Chinesischen Complicationen benutzen, um unter irgend einer Form solche territorialen Vorteile zu erlangen, so behalten beide Contrahenten sich vor, über etwaige Schritte zur Sicherung ihrer eigenen Interessen in China sich vorher unter einander zu verständigen.

„4. Die beiden Regierungen werden diese Übereinkunft den übrigen beteiligten Mächten insbesondere Frankreich, Italien, Japan, Oesterreich-Ungarn, Russland und den Vereinigten Staaten von Amerika mitteilen und dieselben einladen, den darin niedergelegten Grundsätzen beizutreten.“

Mit der ausgezeichnetsten Hochachtung habe ich die Ehre zu sein,

(Unterzeichnet) *P. Hatzfeldt.*

20.

ALLEMAGNE, AUTRICHE-HONGRIE, BELGIQUE, ESPAGNE, ETATS-UNIS D'AMÉRIQUE, FRANCE, GRANDE-BRETAGNE, ITALIE, JAPON, PAYS-BAS, RUSSIE, CHINE.

Protocole final concernant le rétablissement des rélations amicales entre la Chine et les différentes Puissances représentées en Extrême-Orient; signé à Péking le 7 septembre 1901.

Treaty Séries. Nr. 17. 1902.

Les Plénipotentiaires d'Allemagne, son Excellence M. A. Mumm von Schwarzenstein; d'Autriche-Hongrie, son Excellence le Baron M. Czikann von Wahlborn; de Belgique, son Excellence M. Joostens; d'Espagne, son Excellence M. B. J. de Cólogan; les Etats-Unis d'Amérique, son Excellence M. W. W. Rockhill; de France, son Excellence M. Paul Beau; de Grande-Bretagne, son Excellence Sir Ernest Satow: d'Italie, son Excellence le Marquis Salvago Raggi; du Japon, son Excellence M. Jutaro Komura; des Pays-Bas, son Excellence M. F. M. Knobel; de Russie, son Excellence M. M. de Giers; et de Chine, son Altesse Yi-k'ouang, Prince du premier rang K'ing, Président du Ministère des Affaires Étrangères, et son Excellence Li Hong-tchang, Comte du premier rang Sou-yi, Tuteur de l'Héritier Présomptif, Grand Secrétaire du Wen-houa-tien, Ministre du Commerce, Surintendant des ports du Nord, Gouverneur-Général du Tche-li; se sont réunis pour constater que la Chine s'est conformée, à la satisfaction des Puissances, aux conditions énumérées dans la note du 22 décembre 1900, et qui ont été acceptées, dans leur entier, par Sa Majeste l'Empereur de Chine, par un Décret en date du 27 décembre 1900 (Annexe No. 1).

Article 1. a) Par un Édit Impérial du 9 juin dernier (Annexe No. 2), Tsai-feng, Prince du premier rang Tch'oun, a été nommé Ambassadeur de Sa Majesté l'Empereur de Chine, et a été chargé, en cette qualité, de porter à Sa Majesté l'Empereur d'Allemagne l'expression des regrets de Sa Majesté l'Empereur de Chine et du Gouvernement Chinois au sujet de l'assassinat de feu son Excellence le Baron von Ketteler, Ministre d'Allemagne.

Le Prince Tch'oun a quitté Pékin le 12 juillet dernier pour exécuter les ordres qui lui ont été donnés.

b) Le Gouvernement Chinois a déclaré qu'il érigera sur le lieu de l'assassinat de feu son Excellence le Baron von Ketteler un monument commémoratif, digne du rang du défunt, et portant une inscription en langues Latine, Allemande, et Chinoise, qui exprimera les regrets de Sa Majesté l'Empereur de Chine à propos du meurtre commis.

Leurs Excellences les Plénipotentiaires Chinois ont fait savoir à son Excellence le Plénipotentiaire d'Allemagne, par une lettre en date du 22 juillet dernier (Annexe No. 3), qu'un portique de toute la largeur de la rue est érigé sur le dit lieu, et que les travaux ont commencé le 25 juin dernier.

Art. 2. a) Des Édits Impériaux en date des 13 et 21 février 1901 (Annexes Nos. 4, 5 et 6), ont infligé les peines suivantes aux principaux auteurs des attentats et des crimes commis contre les Gouvernements étrangers et leurs nationaux:

Tsai-yi, Prince Touan, et Tsai-lan, Duc Fu-kouo, ont été traduits, pour être exécutés, devant la Cour d'Assises d'Automne, et il a été stipulé que si l'Empereur croit devoir leur faire grâce de leur vie ils seront exilés au Turkestan, et y seront emprisonnés à perpétuité, sans que cette peine puisse jamais être commuée.

Tsai-hiun, Prince Tschouang, Ying-nien, Président de la Cour des Censeurs, et Tchao Chou-k'iao, Président au Ministère de la Justice, ont été condamnés à se donner la mort.

Yu-hien, Gouverneur du Chansi; K'i-sieou, Président au Ministère des Rites; et Siu Tch'eng-yu, précédemment Directeur de Gauche au Ministère de la Justice, ont été condamnés à la peine de mort.

La dégradation posthume a été prononcée contre Kang-yi, Sous-Grand Secrétaire d'Etat, Président au Ministère de l'Intérieur; Siu T'ong, Grand Secrétaire d'Etat; et Li-Ping-heng, ancien Gouverneur-Général du Sze-tch'ouan.

Un Édit Impérial du 13 février 1901 (Annexes No. 7), a réhabilité la mémoire de Siu Yung-yi, Président au Ministère de la Guerre; Li-chan, Président au Ministère des Finances, Hiu King-tch'eng, Directeur de Gauche au Ministère de l'Intérieur; Lien-yuan, Vice-Chancelier au Grand Secrétariat; et Yuan-tch'ang, Directeur à la Cour des Sacrifices, qui avaient été mis à mort pour avoir protesté contre les abominables violations du droit international commises au cours de l'année dernière.

Le Prince Tchouang s'est donné la mort le 21 février 1901; Ying-nien et Tchao Chou-k'iao le 24; Yu-hien a été exécuté le 22; enfin, K'i-sieou et Siu Tch'eng-yu, le 26.

Tong Fou-siang, Général au Kansou, a été privé de ses fonctions par Édit Impérial du 13 février, en attendant qu'il soit statué sur la peine définitive à lui infliger.

Des Édits Impériaux du 29 avril et 19 août 1901, ont infligé des peines graduelles aux fonctionnaires des provinces reconnus coupables des crimes et attentats commis au cours de l'été dernier.

b) Un Édit Impérial promulgué le 19 août 1901 (Annexe No. 8), a ordonné la suspension des examens officiels pendant cinq ans dans toutes les villes où des étrangers ont été massacrés ou ont subi des traitements cruels.

Art. 3. Afin d'accorder une réparation honorable pour l'assassinat de feu M. Sougiyama, Chancelier de la Légation du Japon, Sa Majesté

l'Empereur de Chine a, par un Édit Impérial en 18 juin 1901 (Annexe No. 9), désigné le Vice-Président au Ministère des Finances, Na-t'ong, comme Envoyé Extraordinaire, et l'a chargé spécialement de porter à Sa Majesté l'Empereur du Japon l'expression des regrets de Sa Majesté l'Empereur de Chine et de son Gouvernement au sujet de l'assassinat de feu M. Sougiyama.

Art. 4. Le Gouvernement Chinois s'est engagé à ériger un monument expiatoire dans chacun des cimetières étrangers ou internationaux qui ont été profanés et dont les tombes ont éte détruites.

D'accord avec les Représentants des Puissances, il a été convenu que les Légations intéressées donneront les indications pour l'érection de ces monuments, à charge par la Chine d'en couvrir tous les frais, évalués à 10,000 taels pour les cimetières de Pékin et des environs, à 5,000 taels pour les cimetières des provinces. Ces sommes ont été versées, et la liste de ces cimetières est ci-jointe (Annexe No. 10).

Art. 5. La Chine a accepté de prohiber sur son territoire l'importation des armes et des munitions, ainsi que du matériel destiné exclusivement à la fabrication des armes et des munitions.

Un Édit Impérial a été rendu le 25 août 1901 (Annexe No. 11), pour interdire cette importation pendant une durée de deux années.

De nouveaux Édits pourront être rendus par la suite pour proroger ce terme de deux ans en deux ans, dans le cas de nécessité reconnue par les Puissances.

Art. 6. Par un Édit Impérial en date du 29 mai 1901 (Annexe No. 12), Sa Majesté l'Empereur de Chine s'est engagé à payer aux Puissances une indemnité de 450,000,000 de Haikouan taels. Cette somme représente le total des indemnités pour les États, les Sociétés, les particuliers, et les Chinois visés à l'Article 6 de la note du 22 décembre 1900.

a) Ces 450,000,000 constituent une dette en or, calculée au cours du Haikouan tael par rapport à la monnaie d'or de chaque pays, tels qu'ils sont indiqués ci-après:

Un Haikouan tael =	Marks	3·055
	Couronnes Austro-Hongroises	3·595
	Dollar or	0·742
	Francs	3·750
	Livres sterling	3*s.*
	Yen	1·407
	Florin Néerlandais	1·796
	Rouble or	1·412 (Au titre de dolias 17·424.)

Cette somme en or sera productive d'intérêts à 4 pour cent l'an, et le capital sera remboursé par la Chine en trente-neuf années, dans les conditions indiquées au plan d'amortissement ci-joint (Annexe No. 13).

Le capital et les intérêts seront payables en or ou au taux de change correspondant aux dates des diverses échéances. Le fonctionnement de l'amortissement commencera le 1er janvier 1902, pour finir à l'expiration de l'année 1940. Les amortissements seront payables annuellement, la

première échéance étant fixée au 1er janvier 1903. Les intérêts seront comptés à partir du 1er juillet 1901 mais le Gouvernement Chinois aura la faculté de se libérer, dans un délai de trois ans, commençant le 1er janvier 1902, des arrérages du premier semestre finissant le 31 décembre 1901 à la condition toutefois de payer des intérêts composés à 4 pour cent l'an sur les sommes dont le versement aura ainsi été différé.

Les intérêts seront payables semestriellement, la première échéance étant fixée au 1er juillet 1902.

b) Le service de la dette sera effectué à Shanghai, et de la manière suivante:

Chaque Puissance se fera représenter par un délégué dans une Commission de banquiers, qui sera chargée d'encaisser le montant des intérêts et des amortissements qui lui sera versé par des autorités Chinoises désignées à cet effet, de le répartir entre les intéressés, et d'en donner quittance.

c) Le Gouvernement Chinois remettra au doyen du Corps Diplomatique à Pékin un bon global, qui sera transformé ultérieurement en coupures revêtues de la signature des délégués du Gouvernement Chinois désignés à cet effet. Cette opération, et toutes celles se rapportant à l'établissement des titres, seront effectuées par la Commission précitée conformément aux instructions que les Puissances enverront à leurs délégués.

1. Le reliquat des revenus de la Douane Maritime Impériale, après paiement de l'intérêt et de l'amortissement des emprunts antérieurs gagés sur ces revenus, augmentés du produit de l'élévation à 5 pour cent effectifs du tarif actuel sur les importations maritimes, y compris les articles qui jusqu'à présent entraient en franchise, à l'exception du riz, des céréales et des farines de provenance étrangère, ainsi que de l'or et de l'argent monnayés ou non monnayés.

2. Les revenus des Douanes indigènes administrées, dans les ports ouverts, pour la Douane Maritime Impériale.

3. L'ensemble des revenus de la gabelle, sous réserve de la fraction affectée précédemment à d'autres emprunts étrangers.

L'élévation du tarif actuel sur les importations à 5 pour cent effectifs est consentie aux conditions ci-après.

La mise en vigueur de cette élévation commencera deux mois après la date de la signature du présent Protocole, et il ne sera fait d'exception que pour les marchandises en cours de route, au plus tard dix jours après cette date.

1. Tous les droits sur les importations perçus ad valorem seront convertis en droits spécifiques, autant qu'il sera possible de le faire, et dans le plus bref délai.

Cette conversion sera établie comme suit:

On prendra comme base d'évaluation la valeur moyenne des marchandises au moment de leur débarquement, pendant les trois années 1897, 1898, et 1899 c'est-à-dire, la valeur de marché déduction faite du montant des droits d'entrée et des frais accessoires.

En attendant le résultat de cette conversion, les droits seront perçus ad valorem.

2. Le cours du Pei-ho et celui du Whang-pou seront améliorés avec la participation financière de la Chine.

Art. 7. Le Gouvernement Chinois a accepté que le quartier occupé par les Légations fût considéré comme un quartier spécialement réservé à leur usage et placé sous leur police exclusive, où les Chinois n'auraient pas le droit de résider, et qui pourrait être mis en état de défense.

Les limites de ce quartier ont été ainsi fixées sur le plan ci-joint (Annexe No. 14):

A l'ouest, la ligne 1, 2, 3, 4, 5;

Au nord, la ligne 5, 6, 7, 8, 9, 10;

A l'est, la rue Ketteler: 10, 11, 12;

Au sud, la ligne 12, 1, tirée le long du pied extérieur de la muraille Tartare en suivant les bastions.

Par le Protocole annexé à la lettre du 16 janvier 1901 la Chine a reconnu à chaque Puissance le droit d'entretenir une garde permanente dans le dit quartier pour la défense de sa Légation.

Art. 8. Le Gouvernement Chinois a consenti à faire raser les forts de Ta-kou et ceux qui pourraient empêcher les libres communications entre Pékin et la mer.

Des dispositions ont été prises à cet effet.

Art. 9. Le Gouvernement Chinois a reconnu aux Puissances, par le Protocole annexé à la lettre du 16 janivier, 1901, le droit d'occuper certains points, à déterminer, par un accord entre elles, pour maintenir les communications libres entre la capitale et la capitale et la mer.

Les points occupés par les Puissances sont: Houang-st'oun, Lang-fang, Yang-ts'oun, T'ien-tsin, Kiun-léang-tch'eng, T'ang-kou, Lou-t'ai, T'ang-chan, Louan-tcheou, Tch'ang-li, Ts'-in-Wang-tao, Chan-hai-kouan.

Art. 10. Le Gouvernement Chinois s'est engagé à afficher et à publier, pendant deux ans, dans toutes les villes de district, les Edits Impériaux suivants:

a) Édit du 1er février, 1901 (Annexe No, 15), portant défense perpétuelle, sous peine de mort, de faire partie d'une société anti-étrangère;

b) Édits des 13 et 21 février, 29 avril, et 19 août, contenant l'énumération des peines qui ont été infligées aux coupables;

c) Édit du 19 Août, 1901, supprimant les examens dans toutes les villes où des étrangers ont été massacrés ou ont subi des traitements cruels;

d) Édit du 1er février, 1901 (Annexe No. 16), déclarant que tous les Gouverneurs-Généraux, Gouverneurs, et fonctionnaires provinciaux ou locaux sont responsables de l'ordre dans leurs circonscriptions, et qu'en cas de nouveaux troubles anti-étrangers, ou encore d'autres infractions aux Traités qui n'auraient pas été immédiatement réprimées, et dont les coupables n'auraient pas été punis, ces fonctionnaires seront immédiatement révoqués, sans pouvoir être appelés à de nouvelles fonctions ni recevoir de nouveaux honneurs.

L'affichage de ces Édits se poursuit progressivement dans tout l'Empire.

Art. 11. Le Gouvernement Chinois s'est engagé à négocier les amendements jugés utiles par les Gouvernements étrangers aux Traités de Commerce et de Navigation, et les autres sujets touchant aux relations commerciales dans le but de les faciliter.

Dès maintenant, et par suite des stipulations inscrites à l'Article 6, au sujet de l'indemnité, le Gouvernement Chinois s'engage à concourir à l'amélioration du cours des rivières Pei-ho et Whang-pou, comme il est dit ci-dessous:

a) Les travaux d'amélioration de la navigabilité du Pei-ho commencés en 1898 avec la coopération du Gouvernement Chinois, ont été repris sous la direction d'une Commission Internationale.

Aussitôt après que l'administration de Tien-tsin aura été remise aux Gouvernement Chinois, celui-ci pourra se faire représenter dans cette Commission, et versera chaque année une somme de 60,000 Haikouan taels pour l'entretien des travaux.

b) Il est créé un Conseil fluvial, chargé de la direction et du contrôle des travaux de rectification du Whang-pou et d'amélioration du cours de cette rivière.

Ce Conseil est composé de membres représentant les intérêts du Gouvernement Chinois et ceux des étrangers dans le commerce maritime de Shanghai.

Les frais nécessités par les travaux et l'administration générale de l'entreprise sont évalués à la somme annuelle de 460,000 Haikouan taels pendant les vingt premières années.

Cette somme sera fournie par moitiés par le Gouvernement Chinois et par les intéressés étrangers.

Le détail des stipulations se rapportant à la composition, aux attributions, et aux revenus du Conseil fluvial, fait l'objet de l'Annexe (Annexe No. 17).

Art. 12. Un Édit Impérial du 24 juillet 1901 (Annexe No. 18), a réformé l'Office des Affaires Étrangères (Tsong-li Yamen) dans le sens indiqué par les Puissances, c'est-à dire, l'a transformé en un Ministère des Affaires Étrangères (Wai Wou Pou), qui prend rang avant les six autres Ministères d'État.

Le même Édit a nommé les principaux membres de ce Ministère.

Un accord s'est établi également au sujet de la modification du cérémonial de Cour relatif à la réception des Répresentants étrangers, et a fait l'objet de plusieurs notes des Plénipotentiaires Chinois résumées dans un Mémorandum ci-joint (Annexe No. 19).

Enfin, il est expressément entendu que, pour les déclarations susénoncées et les documents annexés émanant des Plénipotentiaires étrangers, le texte Français fait seul foi.

Le Gouvernement Chinois s'étant ainsi conformé, à la satisfaction des Puissances, aux conditions énumérées dans la note précitée du 22 décembre

1900, les Puissances ont accédé au désir de la Chine de voir cesser la situation créée par les désordres de l'été 1900.

En conséquence, les Plénipotentiaires étrangers sont autorisés à déclarer, au nom de leurs Gouvernements, que, à l'exception des gardes des Légations mentionnées à l'Article 7, les troupes internationales évacueront complètement la ville de Pékin le 17 septembre 1901, et, à l'exception des endroits mentionnés à l'Article 9, se retireront de la Province du Tche-li le 22 septembre 1901.

Le présent Protocole final a été établi en douze exemplaires identiques, et signés par tous les Plénipotentiaires des pays contractants. Un exemplaire sera remis à chacun des Plénipotentiaires étrangers, et un exemplaire sera remis aux Plénipotentiaires Chinois.

Pékin, le 7 septembre 1901.

(Signé) *A. von Mumm.*
M. Czikann.
Joostens.
B. J. de Cologan.
W. W. Rockhill.
Beau.
Ernest Satow.
Salvago Raggi.
Jutaro Komura.
F. M. Knobel.
M. de Giers.
(Signé) *Yi-K'ouang.*
Li Hong-Tchang.

Annexes au Protocole Final.

(Textes Français.)

Nos.

1. Édit Impérial du 27 décembre 1900. (Traduction.)
2. Édit Impérial du 9 juin 1901. (Traduction.)
3. Lettre des Plénipotentiaires Chinois du 22 juillet 1901. (Traduction.)
4. Édit Impérial du 13 février 1901. (Traduction.)
5. Édit Impérial du 13 février 1901. (Traduction.)
6. Édit Impérial du 22 fevrier 1901. (Traduction.)
7. Édit Impérial du 13 fevrier 1901. (Traduction.)
8. Édit Impérial du 19 août 1901. (Traduction.)
9. Édit Impérial du 18 juin 1901. (Traduction.)
10. Liste des Cimetières profanés.
11. Édit Impérial du 25 août 1901. (Traduction.)
12. Édit Impérial du 29 mai 1901. (Traduction.)
13. Tableau d'Amortissement.

14. Plan du Quartier Diplomatique et Notice.
15. Édit Impérial du 1er février 1901. (Traduction.)
16. Édit Impérial du 1er février 1901. (Traduction.)
17. Règlement pour l'amélioration du Whangpou.
18. Édit Impérial du 24 juillet 1901. (Traduction.)
19. Mémorandum relatif au Cérémonial de Cour.

Annexe No. 1.

Édit Impérial du 27 décembre 1900.

(Traduction.)

Le 6e jour de la 11e lune de la 26e année de Kouang-Siu (27 décembre, 1900), l'édit suivant a été rendu:

„Nous avons pris connaissance de tout le télégramme de Yi-K'ouang et de Li Hong-tchang. Il convient que nous acceptions dans leur entier les douze articles qu'ils nous ont soumis.

Respect à ceci!"

(Sceau de l'Empereur.)

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 2.

Édit Impérial du 9 juin 1901

(Traduction.)

Nous conférons à Tsai-feng, Prince du premier rang Tch'oun le titre d'Ambassadeur extraordinaire et le chargeons de se rendre en Allemagne pour s'acquitter respectueusement de la Mission que nous lui confions.

Tchang Yi, Lecteur, à la Grande Chancellerie, et Yin-tch'ang, Lieutenant-Gouverneur Militaire, l'accompagneront en qualité de Secrétaires.

Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 3.

Dépêche du Prince K'ing et de Li Hong-tchang, du 22 juillet 1901, à son Excellence M. de Mumm, Plénipotentiaire d'Allemagne.

(Traduction.)

(Réponse officielle.)

Le 3e jour de la 5e lune de la présente année (le 18 juin 1901), nous avons reçu de votre Excellence la communication officielle ci-après:

„Messieurs Jouei-léang, Secrétaire, et Lien-fang, Taotai en expectative, délégués chargés de l'exécution d l'Article 1 de la Note Collective stipulant l'érection d'un monument commémoratif sur le lieu de l'assassinat du Baron von Ketteler, ci-devant Ministre d'Allemagne, sont entrés il y a quelque temps en pourparlers avec ma Légation, et ont abordé la question du mode d'exécution de ce monument.

Au cours de nombreux entretiens, ils ont déclaré que si l'on tenait à ce qu'un portique commémoratif en marbre de Ta-li et s'étendant sur toute la largeur de l'avenue de Tch'ong-wen-men, fut érigé sur le lieu de l'assassinat, le travail serait très long, en raison des difficultés de transport des matériaux; mais que, pour ce qui était de trouver quelque autre moyen consistant, soit à transférer sur le lieu de l'assassinat un portique placé actuellement ailleurs, soit à dresser un portique neuf, soit à faire usage d'un portique ancien que l'on transporterait, ils s'en remettaient à la décision de mon Gouvernement.

J'ai aussitôt demandé par le télégraphe à mon Gouvernement de me faire connaître ses vues.

La réponse qui vient de me parvenir me fait savoir que Sa Majesté l'Empereur d'Allemagne a décidé lui-même qu'il devait être érigé un portique neuf tenant toute la largeur de la rue.

Je dois en conséquence vous prier instamment de prendre de promptes mesures pour que les travaux puissent commencer immédiatement."

Nous, Prince et Ministre, avons aussitôt prescrit aux dits Secrétaire et Taotai d'agir de conformité. Suivant le rapport qu'ils nous ont adressé, „les travaux ont été commencés le 10e jour de la 5e lune (25 juin) par les fondations. Mais un certain temps est nécessaire pour l'extraction des pierres, leur taille et le transport des matériaux; et on ne peut que veiller à ce que les ouvriers fassent tous leurs efforts pour mener activement le travail."

Outre que nous avons prescrit de nous tenir au courant de l'achèvement des travaux, nous croyons devoir adresser la présente réponse officielle à votre Excellence, en la priant d'en prendre note.

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 4.

Édit Impérial du 13 février 1901.

(Traduction.)

Depuis la 5e lune (fin mai,) les Boxeurs ont soulevé des troubles dans la capitale et ont ouvert les hostilités contre des pays amis. Yi-K'ouang et Li Hong-tchang négocient la paix à Pékin avec les Représentants des Puissances, et tout un arrangement préliminaire a déjà été signé.

(Si) Nous nous reportons au début de ces événements (nous trouvons qu'ils sont dûs) à plusieurs Princes et Ministres stupides, fous, complètement ignorants, turbulents, qui ont foulé aux pieds les lois. Ils ont eu la plus grande confiance dans les moyens pervers et ont entraîné la Cour. Non seulement ils ont refusé d'obéir à nos ordres pour anéantir les Boxeurs, mais ils ont été jusqu'à les croire et, sottement, ils se sont mis à attaquer (les Légations). Aussi ce mauvais feu prit une grande extension, et les circonstances ne permirent pas de l'arrêter, plusieurs dizaines de millions de malfaiteurs s'étant rassemblés au bas du coude et de l'aisselle (c'est-à-dire, un point très important). De plus, les meneurs forcèrent des Généraux et des soldats ignorants à attaquer les Légations, et c'est ainsi que des maux incroyables ont sévi durant plusieurs mois.

Les dieux tutélaires de l'Empire ont été en danger, les tombes Impériales et les temples des Ancêtres ont tremblé, le pays a été dévasté, les habitants sont plongés dans la misère. Aucune parole ne saurait exprimer les dangers que nous et Sa Majesté l'Impératrice Douairière avons courus. Notre cœur et notre tête en souffrent encore maintenant; nos pleurs et nos ressentiments se confondent. C'est vous, Princes et Ministres, qui, en ajoutant foi aux paroles perverses et en laissant agir les malfaiteurs, avez mis en danger, au Ciel, nos Ancêtres et nos dieux, et qui, ici-bas, avez fait endurer au peuple ces calamités. Demandez-vous quel est le châtiment que vous méritez?

Nous avons déjà rendu deux Décrets. Mais, comprenant que des peines si légères pour des fautes si grandes ne pouvaient suffire à vous faire expier vos crimes, nous devons vous infliger de nouveaux châtiments plus sévères, selon votre degré de culpabilité.

Tsai-Hiun, Prince Tchouang, déjà dégradé, a laissé les Boxeurs attaquer les Légations. Il a, de sa propre autorité, publié des Proclamations contraires aux Traités; il a ajouté foi légèrement aux dires des malfaiteurs; il a fait décapiter illégalement un grand nombre de personnes; il s'est montré, en vérité, grossier et inintelligent. Nous l'invitons, par faveur, à se suicider. Nous chargeons Ko pao-houa, Président par intérim de la Cour des Censeurs, d'aller constater (le suicide).

Tsai-Yi, Prince Touan, déjà dégradé, a entraîné avec lui plusieurs Princes et Peilo (Princes du troisième rang). Il a écouté légèrement les Boxeurs et, sottement, il a conseillé de se battre. C'est ainsi que tous ces troubles ont éclaté: ses fautes, en vérité, ne peuvent être écartées. Tsai-Lan, Duc Fou-Kouo, rétrogradé, a, de concert avec Tsai-Hiun, sottement

publié des Proclamations contraires aux Traités. Il doit également être puni pour ses fautes. Nous les privons de leurs titres de noblesse, mais, considérant qu'ils font partie de notre famille, nous ordonnons, par une faveur spéciale que nous leur accordons, qu'ils soient envoyés dans le Sin-Kiang (Ili), où ils seront condamnés à perpétuité à la prison. On enverra d'abord des délégués pour les surveiller.

Yu-hien, Gouverneur dégradé, a cru sottement, lorsqu'il exerçait précédemment les fonctions de Gouverneur au Chantong, aux philtres des Boxeurs. Arrivé à Pékin, il en a vanté les louanges, si bien, que plusieurs Princes et Ministres ont subi sa mauvaise influence. Étant Gouverneur du Chansi, il a massacré un grand nombre de missionnaires et de Chrétiens. C'est plus qu'un imbécile, qu'un fou, qu'un assassin, c'est le plus grand coupable et l'auteur de toutes ces calamités. Il a déjà été envoyé au Sin-Kiang, et pensant qu'il est arrivé au Kan-sou, nous ordonnons que, sur l'ordre que nous envoyons, il soit immédiatement décapité. Nous chargeons le juge provincial Ho Fou-koueun de constater l'application de la peine.

Kang-Yi, Sous-Grand Secrétaire d'Etat, Président au Ministère de l'Intérieur, ayant prêté son appui aux Boxeurs, des troubles graves éclatèrent. Il contribua à publier des Proclamations contraires aux Traités. Un châtiment sévère devait à l'origine lui être infligé, mais il est mort de maladie. Nous ordonnons que les grades qu'il possédait primitivement lui soient retirés et qu'il soit aussitôt dégradé.

Tong Fou-siang, Général au Kan-sou, dégradé et laissé en fonctions, est entré (dans Pékin) pour défendre (la ville) avec les troupes placées sous ses ordres; il n'a pas su exercer une discipline sévère. Ignorant de plus les questions internationales, il suivait ses idées et agissait d'une façon inconsidérée. Bien que les attaques contre les Légations lui fussent ordonnées par les susdits Princes dégradés, il est difficile cependant de l'absoudre de toutes fautes. Nous devions d'abord le punir sévèrement, mais, songeant aux services signalés qu'il a rendus au Kan-sou et aux sympathies qu'il a acquises parmi les Musulmans et les Chinois, par un acte de clémence extraordinaire, nous ordonnons qu'il soit immédiatement dégradé.

Ying-Nien, Président de la Cour des Censeurs, rétrogradé et déplacé, s'est opposé à ce que Tsai-Hiun publie, de sa propre autorité, des Proclamations contraires aux Traités. Nous pouvons tenir compte de cette circonstance, mais comme il n'a pas su vaincre (cette résistance) par la force, il est en somme difficile de l'absoudre de ses fautes. Nous ordonnons, par une marque de grande bienveillance, qu'il soit dégradé. Nous le condamnons à mort, et il attendra en prison qu'il soit statué sur son cas.

Tchao Chou-kiao, Président au Ministère de la Justice, dégradé et laissé en fonctions, n'avait jamais montré jusqu'alors aucun sentiment d'animosité dans les relations avec les Puissances étrangères. Ayant fait une enquête sur les Boxeurs, il ne tint aucun propos en leur faveur, mais

par sa négligence des fautes furent commises. Nous ordonnons, par une marque de grande bienveillance, qu'il soit dégradé. Nous le condamnons à mort, et il attendra en prison qu'il soit statué sur son cas.

Nous ordonnons qu'Ying-Nien et Tchao Chou-kiao soient d'abord enfermés dans la prison de la capitale du Chen Si.

Siu tong, Grand Secrétaire d'Etat, et Li Ping-heng, ancien Gouverneur-Général du Szet-chouen, rétrogradé et déplacé, sont morts pour la patrie, mais tout le monde reconnaît leurs fautes. Nous ordonnons de les dégrader et nous leur retirons les honneurs posthumes que nous leur avions conférés.

Après la promulgation de ce Décret, tous nos pays amis devront considérer que les événements causés par les Boxeurs ne sont dûs en vérité qu'aux principaux fauteurs de désordre et nullement aux désirs de la Cour.

Nous, Empereur, ne punissant pas à la légère plusieurs des principaux fauteurs de désordre, les mandarins et les populations de l'Empire comprendront aussitôt que les conséquences de telles affaires sont des plus graves.

Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 5.

Édit Impérial du 13 février 1901.

(Traduction).

K'i Sieou, Président au Ministère des Rites, et Siu Tch'eng-yu, précédemment Directeur de Gauche au Ministère de la Justice, seront d'abord dégradés.

Nous ordonnons à Yi-K'ouang et à Li Hong-tchang de rechercher les preuves exactes de leur culpabilité et de nous adresser aussitôt un rapport,

Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 6.

Édit Impérial du 21 fevrier 1901.

(Traduction).

Édit rendu et transmis télégraphiquement. le 3e jour de la 1e lune (21 février 1901), et reçu le 4 par la Grande Chancellerie.

Par un Édit antérieur, nous avions déjà sévèrement puni, suivant leur cas, tous les hautes fonctionnaires auteurs principaux des maux présents. Mais nous avons reçu, il y a quelques temps, un rapport télégraphique de Yi-K'ouang et de Li Hong-tchang, nous disant que, d'après une dépêche officielle des Ministres Plénipotentiaires des diverses Puissances, de nouvelles aggravations de peines étaient nécessaires, et nous suppliant de prendre une décision.

Outre Tsai-Hiun, auquel il a été prescrit de se suicider, et Yu-Hien, contre lequel la peine de la décapitation immédiate a été prononcée et pour chacun desquels des délégués seront chargés d'aller vérifier (l'exécution des sentences), nous décidons que la peine applicable à Tsai-Yi (Prince Touan) et à Tsai-Lan (Duc Lan) est la décapitation avec sursis; toutefois, en considération des liens de parenté qui les unissent à nous, nous leur faisons la faveur toute spéciale de les envoyer sur les confins de l'Empire, au Turkestan, où ils seront emprisonnés à perpétuité. Un délégué chargé de les conduire sous escorte sera désigné et partira au premier jour.

Pour Kang-Yi, dont les crimes étaient plus graves, la peine à appliquer aurait été la décapitation sans délai; mais comme il est déjà mort de maladie, il lui sera fait grâce d'un nouvel examen de son cas.

Pour Ying-Nien et Tchao Chou-K'iao, dont la peine, suivant nos précédentes décisions, devait être la décapitation avec sursis, Nous ordonnons qu'ils soient invités à se suicider, et nous chargeons Ts'en-Tch'oun-Hiuan, Gouverneur du Chan-si, d'aller contrôler (leur mort).

Pour K'i-Sieou et Siu Tc'heng-Yu, que les Puissances désignent comme les protecteurs acharnés des bandits Boxeurs et comme ayant tout particulièrement fait du mal aux étrangers, nous avions précédemment édicté leur destitution; nous ordonnons (aujourd'hui) à Yi-K'ouang et à Li Hong-tchang de demander aux Puissances, par dépêche, leur remise, et de les faire aussitôt exécuter. L'un des Présidents du Ministère de la Justice sera chargé de contrôler (leur exécution).

Quant à Siu T'ong, qui a compromis les grands intérêts généraux en accordant à la légère confiance aux Boxeurs, et à Li Ping-Heng, dont les habitudes de vantardise ont délibérément engendré ces malheurs, la peine à leur appliquer aurait été la décapitation avec sursis; mais, prenant en considération qu'ils se sont suicidés en voyant approcher le désastre, qu'ils ont déjà été dégradés, et que les honneurs posthumes qui leur avaient été décernés ont été annulés et retirés, il convient de ne pas revenir sur leur cas.

La nature des crimes commis par tous les auteurs principaux du mal a été exposée, d'une façon claire et détaillée, dans de précédents Décrets.

Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 7.

Édit Impérial du 13 février 1901.

(Traduction).

Les troubles suscités par les Boxeurs dans le courant de la 5e lune (mai-juin) ayant augmenté de jour en jour, la Cour avait deux partis difficiles à prendre, soit de prendre des mesures coercitives, soit de les apaiser. Dans l'espoir qu'une voie nous serait indiquée, les Ministres furent appelés plusieurs fois en audience.

Nous avons maintes fois interrogé Siu Yong-yi, Président au Ministère de la Guerre, Li-chan, Président au Ministère des Finances, Hiu-King-tcheng, Directeur de Gauche au Ministère de l'Intérieur, Lien-Yuan, Vice-Chancelier du Grand Secrétariat, Yuan-tchang, Directeur à la Cour des Sacrifices.

Dans leurs discours et dans leurs pensées, tous admirent que les deux méthodes étaient possibles. Plusieurs Ministres fauteurs de désordre, profitant aussitôt de cette circonstance, les accusèrent injustement, remirent des Mémoires, dans lesquels ils les dénonçaient. C'est ainsi qu'ils furent punis sévèrement dans leur personne.

Mais, songeant que Siu Yong-yi et autres ont fait preuve d'un grand zèle pendant plusieurs années et qu'ils se sont toujours occupés de questions internationales, qu'ils pouvaient être fidèles et qu'ils se sont montrés laborieux, nous devons leur accorder une faveur.

Nous ordonnons que Siu Yong-yi, Li-chan, Hiu King-tcheng, Lien-Yuan, et Yuan-tchang soient réintégrés dans leurs anciens grades.

Que le Ministère que l'affaire concerne en soit informé.

Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 8.

Édit Impérial du 19 août 1901.

(Traduction).

Édit reçu par la Grande Chancellerie le 6e jour de la 7e lune de la 27 année Kouang-Siu (le 19 août 1901).

Vu le rapport de ce jour par lequel Yi-K'ouang et Li Hong-tchang nous font savoir que les Puissances étrangères ont décidé la suspension pendant cinq années des examens civils et militaires dans les localités qui ont été le théâtre de troubles;

Considérant qu'il est déclaré que cette suspension devra rester applicable aux examens locaux de licence de Choun-t'ien et de T'aiyuan;

Vu la liste comprenant les localités de:

Province du Chan-si: T'ai-yuan-fou, Hin-tcheou, T'ai-kou-hien, Ta-t'ong-fou, Fen-tcheou-fou, Hiao-yi-hien, K'iu-wo-hien, Ta-ning-hien, Ho-tsin-hien, Yo-Yang-hien, So-p'ing-fou, Wen-chouei-hien, Cheou-yang-hien, P'ing-yang-fou, Kch'ang-tze-hien, Kao-p'ing-hien, Tse-tcheou-fou, Si-tcheou, P'ou-hien, Kiang-tcheou, Kouei-houa-tch'eng, Souei-yuan-tch'eng;

Province du Ho-nan: Nan-yang-fou, Kouang-tcheou;

Province du Tchè-kiang: K'iu-tcheou-fou;

Province du Tché-li: Pékin, Choun-t'ien-fou, Pao-ting-fou, Yong-ts'iug-hien, T'ien-tsin-fou, Choun-te-fou, Wang-tou-hien, Houai-lou-hien, Sin-ngan-hien, T'ong-tcheou, Wou-yi-hien, King-tcheou, Louan-p'ing-hien.

Trois provinces de Mandchourie: Cheng-king (= Moukden), Kia-tze-tch'ang. Lien-chan, Yu-k'ing-kié, Pei-lin-tze, Hou-lan-tch'eng;

Province du Chén-si: Ning-kiang-tcheou;

Province du Hou-nan: Heng-tcheou-fou;

Nous ordonnons que, dans toutes ces localités, les examens civils et militaires soient suspendus pendant une durée de cinq années, et nous prescrivons à tous les Gouverneurs-Généraux, Gouverneurs, et Examinateurs des provinces visées, d'agir de conformité et de faire publier des Proclamations.

Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 9.

Édit Impérial du 18 juin 1901.

(Traduction.)

Édit reçu par télégraphe de Si-ngan-fou le 3e jour de la 5e lune (18 juin 1901).

Nous conférons à M. Na-t'ong, second Vice-Président du Ministère des Finances, le bouton mandarinal du premier rang, et le désignons comme Envoyé spéciale pour se rendre au Japon et s'y acquitter respectueusement de la mission dont nous le chargeons.

Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 10.

Liste des Cimetières situés aux environs de Pékin, et qui ont été profanés.

Cimetière Auglais	1
Cimetière Français	5
Cimetière Russe	1
Total . .	7

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 11.

Édit Impérial du 25 août 1901.

(Traduction.)

Nous ordonnons à tous les Maréchaux Tartares, Gouverneurs-Généraux, et Gouverneurs des provinces, ainsi qu'aux Taotais des Douanes, d'interdire, d'abord pour une durée de deux ans, l'importation des engins de guerre, ainsi que du matériel servant exclusivement à leur fabrication de provenance étrangère. Aviser le Ministère que cela concerne.

Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 12.

Dépêche du Prince K'ing et de Li Hong-tchang à M. de Cologan Ministre d'Espagne, Doyen du Corps Diplomatique, le 29 mai 1901.

(Traduction.)

Le 12e jour de la 4e lune de la 27e année de Kouang-Siu (le 29 mai 1901).

Réponse officielle.

Le 7e jour de la 4e lune de la présente année (le 24 mai 1901), nous avons reçu de votre Excellence la communication officielle ci-après:

„J'ai l'honneur d'accuser réception à votre Altesse et à votre Excellence de la lettre qu'elles ont bien voulu m'adresser en réponse à ma communication en date du 7 mai au sujet des indemnités. Dans la lettre à laquelle votre Altesse et votre Excellence viennent de répondre nous leur faisons connaître que le chiffre des dépenses effectuées et des pertes subies par les Puissances s'élevait à la somme approximative de 450,000,000 de taels calculée jusqu' au 1er juillet.

En réponse à cette communication, votre Altesse et votre Excellence m'ont fait connaître que le Gouvernement Chinois proposait de s'acquitter de cette somme envers les Puissances au moyen de versements mensuels de 1,250,000 taels pendant trente années.

Les Représentants des Puissances n'ont pas manqué de transmettre cette proposition à leurs Gouvernements. Mails ils doivent appeler l'attention de votre Altesse et celle de votre Excellence sur le fait que le total des versements proposés par le Gouvernement Chinois ne représente que le capital de la somme indiquée, sans qu'il ait été tenu compte du calcul des intérêts.

Je prie en conséquence votre Altesse et votre Excellence de vouloir bien nous faire connaître, le plus tôt possible, les intentions du Gouvernement Chinois à cet égard."

En traitant dans une précédente dépêche la question des indemnités, nous avons exposé à votre Excellence l'état de pénurie du Trésor Chinois. Dans sa dernière communication votre Excellence veut bien nous faire observer que les versements annuels de 15,000,000 de taels que nous avons proposés ne représentent que le capital, et vous appelez maintenant notre attention sur la question des intérêts.

Estimant nous-mêmes, qu'outre le capital, il y avait lieu de tenir compte d'intérêts annuels à 4 pour cent, nous avions déjà, par télégramme, soumis au Trône des propositions à ce sujet; et, en réponse, nous avons reçu un Édit Impérial portant que „le chiffre des indemnités à payer aux Puissances de 450,000,000 avec intérêts à 4 pour cent est approuvé, et nous commandant de prendre les mesures nécessaires pour donner suite à cette décision."

Nous n'avons donc plus qu'à nous conformer aux ordres du Trône.

Toutefois ceci nous oblige à rappeler à votre Excellence que les ressources financières de la Chine sont tellement limitées qu'aucun prélè-

vement n'est possible en dehors des 15,000,000 de taels que nous avons déjà proposé à votre Excellence d'affecter spécialement au paiement des indemnités. Or, puisqu'ils doivent faire face non-seulement au paiement du capital, mais aussi au service des intérêts, nous n'avons d'autre alternative à proposer que de prolonger le terme des paiements que nous avions fixé d'abord à trente années, de telle manière que les versements effectués pendant la première période de ce terme ainsi prolongé soient considérés comme destinés à étendre le capital, pendant que ceux opérés au cours de la seconde période serviraient à liquider le compte des intérêts: tout paiement cesserait alors par suite de l'extinction de la dette. La Douane Impériale Maritime, déjà chargée, comme nous le proposions, des versements du capital, serait également chargée du versement des intérêts. Quant au chiffre des intérêts annuels, il serait entendu qu'il diminuerait proportionnellement d'année en année à mesure de l'extinction propressive du capital.

Nous avons l'honneur de prier votre Excellence de vouloir bien nous faire connaître ce qu'elle pense du mode de procédure que nous lui proposons ci-dessus pour acquitter le capital et les intérêts, ou, si à son avis il ne vaudrait pas mieux considérer une partie des 15,000,000 versés annuellement comme un àcompte sur les intérêts à servir. Ces détails demandent un examen attentif et exigent une entente préalable et complète.

La Chine ayant ainsi montré tout son bon vouloir en accédant aux demandes des Puissances sur la question des indemnités, et prenant toutes les dispositions nécessaires pour en assurer le paiement intégral, nous espérons avoir bientôt la satisfaction d'apprendre que les Puissances se trouvent à même de fixer une date prochaine à l'évacuation.

Nous avons l'honneur de prier votre Excellence de vouloir bien porter cette communication à la connaissance des Représentants des Puissances.

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 14.

Description des Limites du Quartier des Légations à Pékin.

Le point 1 est situé sur la muraille sud de la ville Tartare à 100 pieds à l'est du côté est de la superstructure de la Tsien Men. De ce point la limite court, sur une longueur de 216 pieds, suivant une ligne presque directement nord, jusqu'au

Point 2, coin sud-est de la balustrade en pierres blanches qui entoure l'espace ouvert, pavé, devant l'entrée principale de la Cité Impériale.

Du ce point la limite court, sur une longueur de 310 pieds, le long du côté est de cette balustrade, presque directement au nord jusqu'au

Point 3, situé sur le côté nord de la route qui fait suite à la Rue des Légations, et qui est à l'intersection de la limite venant de 2 et d'une ligne tirée en prolongement du côté nord de la Rue des Légations. De ce point la ligne court, sur une longueur de 641 $^1/_2$ pieds (mesurés autour et dans les coins du mur), le long du côté nord de la Rue des Légations jusqu'au

Point 4, à 146 pieds à l'ouest du coin (sud-ouest) de la Gaselee Road, mesurés le long du nord de la Rue des Légations.

Depuis ce point la limite court, sur une longueur de 2,152 pieds (mesurés autour et dans les coins des constructions), dans la direction générale du nord, mais en côtoyant les constructions actuellement existantes, et, dans les espaces ouverts entre les constructions, le long d'une ligne parallèle à l'alignement général du côté gauche de la Gaselee Road et à 157 pieds à l'ouest côté ouest de la porte qui mène de la Gaselee Road à la cour extérieure de la Cité Impériale, jusqu'au

Point 5, sur la face sud du mur sud de la cour extérieure de la Cité Impériale, et à 157 pieds depuis le côté ouest de la porte au bout de la Gaselee Road.

Depuis ce point la ligne court sur une distance de 1,288 pieds, presque directement dans l'est, le long du mur, jusqu'au

Point 6, coin sud-est de la cour extérieure de la Cité Impériale.

De là, la ligne court presque directement au nord, le long du mur, sur une distance de 218 pieds mesurés en droite ligne jusqu'au

Point 7, coin nord-est de la cour extérieure.

De là, la ligne court presque droite dans l'est, sur une distance de 681 pieds jusqu'au

Point 8, coin sud-est de la muraille de la Cité Impériale.

De ce point la limite court presque directement au nord, sur une distance de 65 pieds, le long du mur jusqu'au

Point 9, à 65 pieds du coin sud-est du mur de la Cité Impériale.

De là, la limite court directement à l'est sur une longueur de 3,010 pieds jusqu'au

Point 10, sur le côté ouest de la Ketteler Strasse et à 300 pieds du coin d'intersection de la Ketteler Strasse et de la Viale Italia.

De ce point la limite court presque directement au sud, le long de la face ouest de la Ketteler Strasse jusqu'au

Point 11, coin nord-ouest de la voûte de la Hatamen, sur la muraille sud de la ville Tartare.

De là, la limite court le long du mur et comprend la rampe ouest de la Hatamen jusqu'au

Point 12, sur le mur à 100 pieds à l'ouest de la superstructure de la Hatamen.

A partir de 12, la limite suit la face sud de la muraille, comme le montre le plan, y compris les bastions, et va rejoindre 1.

Les points du plan dont les relèvements sont pris sont les suivants:

A) Point à 107 pieds de la superstructure de la Tsien Men, mesuré à l'est le long du bord nord du faîte du mur de la ville Tartare.

B) Point sur le sommet du bord nord du mur de la ville Tartaro, juste au-dessus du milieu du canal d'écoulement des eaux.

C) Coin nord-ouest de la superstructure de la Hatamen.

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 15.

Édit Impérial du 1er février 1901.

(Traduction.)

Dans toutes les provinces, des bandits ont appelé des adhérents et fondé des Sociétés anti-étrangères. Divers Édits l'ont interdit formellement. Nous l'avons répété maintes fois, et cependant, dans ces dernières années, il y a encore eu, dans tous les districts du Chan-tong, des sectes du nom de Ta-tao-houei (Société des Grands Couteaux) et Y-Ho-Kien (Boxeurs), qui se sont, propagées partout pour tuer et voler sciemment. Elles ont gagné peu à peu le territoire du Tche-li, et ont pénétré brusquement dans la capitale, où les établissements étrangers ont été incendiés et les Légations attaquées. Des crimes ont été ainsi commis contre des pays voisins, et des fautes ont été faites contre l'intérêt général. Pour ne pas avoir assuré la protection, nous avons encouru des responsabilités considérables.

Vous, peuple, qui en temps ordinaire vous nourrissez et vivez des produits de cette terre, qui tous avez été comblés des bienfaits de l'Empire, vous avez osé cependant inciter ces bandits à désirer se battre, à enseigner des méthodes pour jeter des sorts et à s'adonner à de fausses pratiques. Vous avez résisté témérairement à vos Mandarins, vous les avez massacrés, vous avez assassiné des étrangers, et puis vous avez été cause de ces calamités inouïes qui par dessus tout ont plongé dans la douleur votre Souverain et vos pères.

Nous ne pouvons penser à ce qui a été fait sans éprouver un ressentiment plus profond encore. Nous avons déjà prescrits formellement aux Commandants-en-chef de toutes les régions de faire leurs efforts les plus sincères pour détruire ces Sociétés. Il importe de supprimer le mal jusque dans sa racine, aussi les Princes et les Ministres, qui ont rêté leur appui aux Boxeurs, subiront-ils les peines les plus sévères conformes à leurs crimes, et, afin d'inspirer la crainte, tous les examens civils et militaires

seront supprimés pendant cinq ans dans toutes les villes où des étrangers ont été massacrés ou ont subi des traitements cruels.

Craignant que les populations ignorantes des campagnes n'aient pas connaissance (de ces punitions), de nouvelles interdictions sévères seront faites spécialement, afin d'éviter que l'on n'exécute des gens qui n'auraient pas été avisés.

Vous, soldats et peuple, vous devez savoir qu'il est formellement défendu par la Loi de former des Sociétés secrètes ou d'en faire partie. Nos ancêtres n'ont jamais montré la moindre indulgence dans la répression contre des Sociétés des malfaiteurs.

D'ailleurs, les Puissances étrangères sont toutes des pays amis, les Chrétiens sont des enfants de notre sang, que la Cour regarde avec la même bienveillance, et elle ne saurait admettre d'avoir pour eux des sentiments différents. Tous les Chinois, Chrétiens ou non, qui seraient maltraités, devront se plaindre auprès des autorités, et attendre qu'un jugement juste et équitable soit rendu. Comment pouvez-vous croire à la légère toutes les rumeurs que l'on répand? Comment pouvez-vous ne plus tenir compte des lois pénales?

Ensuite, lorsque tout est perdu, ceux qui sont habiles se sauvent au loin et les naïfs sont mis à mort. La Loi pardonne difficilement, et tout ceci est vraiment fort triste. A partir de la publication du présent Édit chacun devra s'amender et se repentir des enseignements qu'il a reçus.

Si des malfaiteurs endurcis et incorrigibles venaient encore à former clandestinement des Sociétés anti-étrangères, ils seraient punis de mort, ainsi que quiconque ferait partie de ces Sociétés. On ne pourra avoir pour eux la moindre indulgence.

Les Maréchaux Tartares, les Gouverneurs-Généraux, Gouverneurs, et Hautes Autorités provinciales qui ont le devoir de diriger les populations, devront donner des instructions très précises à leurs subordonnés de publier des Proclamations sévères, et de faire imprimer sur papier jaune le présent Décret, qui sera affiché partout. Il importe que toutes les familles soient avisées, qu'on les exhorte toutes au bien, et que nul n'ignore que la volonté de la Cour est que tous sachent bien que l'on punira afin d'éviter d'infliger d'autres punitions.

Que cet Édit soit porté dans tout l'Empire à la connaissance de tous. Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 16.

Décret Impérial du 24 décembre 1900.

(Traduction.)

Il a été stipulé dans les Traités passés entre la Chine et les Puissances étrangères que les nationaux de ces Puissances auront la faculté de pénétrer dans l'intérieur.

La Cour, pour assurer et maintenir les relations avec les autres pays, a déjà rendu des Décrets prescrivant que l'on fasse les efforts les plus sincères dans les provinces pour assurer la protection. Cependant, les autorités locales s'étant relâchées peu à peu (dans l'exercice de leurs fonctions), des troubles ont été causés par les malfaiteurs, et des attaques ont été dirigées contre les étrangers. On a vu de semblables incidents se renouveler plusieurs fois.

Nous comprenons que nos qualités ont été trop faibles pour amener le peuple ignorant à se réformer, ce qui nous a conduit à commettre des fautes immenses. Pas un seul Mandarin locul n'a su, en temps ordinaire, faire connaître les affaires Européennes, et aucun n'a compris l'importance des relations étrangères. Aussi la conflagration s'est-elle étendue partout menaçant l'Empire, et s'ils s'interrogent en eux-mêmes, ils ne se sentiront pas tranquilles.

Dorénavant chacun d'entre vous devra s'appliquer à repousser ses ressentiments et à dépouiller ses préjugés. Vous devez savoir que, de tous temps, l'entretien de relations amicales avec les pays étrangers a été une règle fondamentale. Les gens qui arrivent en Chine venant de loin, soit, comme marchands pour y échanger leurs produits, soit comme voyageurs pour augmenter leurs connaissances scientifiques, ou encore comme missionnaires pour prêcher la religion, dans le but d'exhorter les gens à faire le bien, ont franchi les montagnes et traversé les mers aux prix des plus grandes fatigues.

Puisque la Chine passe pour un pays civilisé, elle doit pratiquer les devoirs d'un hôte envers ses invités. D'ailleurs, les Chinois qui, dans ces dernières années, se sont rendus à l'étranger, sont au moins plusieurs centaines de milles. Leurs personnes et leurs biens dépendent de la garantie que leur assurent les Puissances qui leur ont donné leur protection. Comment pourrions-nous continuer de traiter différemment leurs nationaux?

Nous ordonnons de nouveau à toutes les Hautes Autorités civiles et militaires responsables de toutes les provinces de prescrire à leurs subordonnés de protéger, de la façon la plus efficace, les agents et nationaux des Puissances étrangères qui viendraient dans leurs circonscriptions. Dans le cas où des malfaiteurs audacieux pousseraient à maltraiter et massacrer des étrangers, on devra sur le champ aller rétablir l'ordre, arrêter les coupables, et les châtier. Aucun retard ne devra y être apporté. Si, par suite d'indifférence, ou plus, de tolérance volontaire, de grandes calamités venaient à se produire, ou si des infractions aux Traités

venaient à se produire, et n'étaient pas immédiatement réprimées et punies, les Gouverneurs-Généraux, Gouverneurs, et fonctionnaires provinciaux ou locaux responsables seront révoqués sans pouvoir être appelés à de nouvelles fonctions dans d'autres provinces, ou espérer être réintégré, ni recevoir de nouveaux honneurs.

Le présent Décret devra être imprimé et publié afin de prévenir les Mandarins et le peuple et mettre fin à toutes ces habitudes indignes.

Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 18.

Édit Impérial du 24 juillet 1901.

(Traduction.)

Le 9e jour de la 6e lune, la Grande Chancellerie a reçu l'Édit ci-après:

„La création de fonctionnaires et la détermination de leurs attributions ont jusqu'ici été réglées d'après les nécessités des temps. Or, en ce moment où un nouveau Traité de Paix est conclu, les relations internationales vont au premier rang des affaires importantes, et il est plus que jamais nécessaire de recourir à des hommes capables pour s'occuper de tout ce qui a rapport à l'établissement de l'amitié dans les relations et de la confiance dans le langage.

L'Office des Affaires Etrangères, créé autrefois pour traiter les questions internationales, existe bien depuis des années, mais étant donné que les Princes et Ministres qui le composaient n'exerçaient pour la plupart ces fonctions qu'accessoirement à d'autres, ils ne pouvaient s'y consacrer exclusivement. Il convient donc naturellement de créer des fonctions spéciales afin que chacun ait son attribution propre.

Nous ordonnons en conséquence que l'Office des Affaires Étrangères (Tsong li ko kouo che-wou yamên) soit changé en Ministère des Affaires Etrangères (Wai Wou pou) et prenne rang avant les six Ministères. Et nous désignons Yi-Kouang, Prince du premier rang K'ing, comme Président du Ministère des Affaires Étrangères.

M. Wang Wen Chao, Grand Secrétaire d'État du Ti-jen Ko, est nommé Président-adjoint au Ministère des Affaires Étrangères; M. K'in Hong ki, Président du Ministère des Travaux Publics, passe avec le même titre au Ministère des Affaires Étrangères, où il est nommé Président-adjoint; M. Sin Chéou p'eng, Directeur de la Cour des Haras, et M. Lien-fang, Expectant Sous-Directeur Métropolitain de troisième ou quatrième rang, sont nommés premier et second Directeurs (ou Sous-Secrétaires).

En ce qui regarde la fixation du personnel, les règlements qui devront présider à son choix, les émoluments à attribuer aux Ministres, Directeurs, et autres Agents, nous prescrivons aux Conseillers de Gouvernement de se concerter avec le Ministère du Personnel, et de nous adresser promptement leurs conclusions par voie de rapport.

Respect à ceci!

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

Annexe No. 19.

Mémorandum sur le Cérémonial à observer dans les Audiences solennelles.

1. Les audiences solennelles données par Sa Majesté l'Empereur de Chine au Corps Diplomatique ou aux Représentants des Puissances séparément auront lieu dans la salle du Palais appelée „K'ien-ts'ing Kong".

2. En allant à ces audiences solennelles ou en en revenant les Représentants des Puissances seront portés dans leur chaise jusqu'à l'extérieur de la porte King-yun. A la porte King-yun ils devront descendre de la chaise dans laquelle ils seront venus et être portés dans une petite chaise (i chiao) jusqu'au pied des marches de la porte K'ien-ts'ing.

En arrivant à la porte K'ien-ts'in les Représentants des Puissances devront descendre de chaise et s'avancer à pied jusqu'en présence de Sa Majesté dans la salle K'ien-ts'ing Kong.

En partant, les Représentants des Puissances devront retourner à leur résidence de la même manière qu'ils seront venus.

4. Quand un Représentant d'une Puissance aura à présenter à Sa Majesté l'Empereur ses lettres de créance ou une communication du Chef de l'État par lequel il est accrédité, l'Empereur fera envoyer à la résidence du dit Représentant, pour le porter au Palais, une chaise à porteurs avec des garnitures et des glands jaunes, telles que celles qui sont à l'usage des Princes de la famille Impériale. Le dit Représentant sera reconduit chez lui de la même manière. Une escorte de troupes sera également envoyée à la résidence du dit Représentant pour l'accompagner à l'aller et au retour.

4. En présentant ses lettres de créance ou une communication du Chef de l'Etat par lequel il est accrédité, l'Agent Diplomatique, pendant qu'il portera les dites lettres ou communications, passera par les ouvertures centrales des portes du Palais jusqu'à ce qu'il soit parvenu en présence de Sa Majesté. En revenant de ces audiences il se conformera, en ce qui concerne les portes par lesquelles il pourra avoir à passer, aux usages

déjà établis à la Cour de Pékin pour les audiences données aux Représentants étrangers.

5. L'Empereur recevra directemnnt entre ses mains les lettres et communications ci-dessus mentionnées que les Représentants étrangers pourront avoir à lui remettre.

6. Si Sa Majesté décidait d'inviter à un banquet les Représentants des Puissances, il est bien entendu que ce banquet devra avoir lieu dans une des salles du Palais Impérial et que Sa Majesté devra y assister en personne.

7. En un mot, le cérémonial adopté par la Chine à l'égard des Représentants étrangers ne pourra être, en aucun cas, différent de celui qui résulte d'une parfaite légalité entre les pays concernés et la Chine, sans aucune perte de prestige de part et d'autre.

Pour copie conforme:

(Signé) *A. d'Anthoüard.*
B. Kroupensky.
Reginald Tower.
v. Bohlen Halbach.

21.

GRANDE-BRETAGNE, RUSSIE.

Echange de notes en vue de régler certaines questions concernant les chemins de fer en Chine; du 16/28 avril 1899.

Treaty Series. No. 11. 1899.

Sir C. Scott to Count Mouravieff.

The Undersigned, British Ambassador, duly authorized to that effect, has the honour to make the following declaration to his Excellency Count Mouravieff, Russian Minister for Foreign Affairs:

Great Britain and Russia, animated by a sincere desire to avoid in China all cause of conflict on questions where their interests meet, and taking into consideration the economic and geographical gravitation of certain parts of that Empire, have agreed as follows:

1. Great Britain engages not to seek for her own account, or on behalf of British subjects or of others, any railway Concessions to the north of the Great Wall of China, and not to obstruct, directly or indirectly, applications for railway Concessions in that region supported by the Russian Government.

2. Russia, on her part, engages not to seek for her own account, or on behalf of Russian subjects or of others, any railway Concessions

in the basin of the Yang-tsze, and not to obstruct, directly or indirectly, applications for railway Concessions in that region supported by the British Government.

The two Contracting Parties, having nowise in view to infringe in any way the sovereign rights of China or existing Treaties, will not fail to communicate to the Chinese Government the present arrangement, which, by averting all cause of complications between them, is of a nature to consolidate peace in the Far East, and to serve the primordial interests of China herself.

(Signed) *Charles S. Scott.*

St. Petersburgh, April 28, 1899.

Count Mouravieff to Sir C. Scott.

Le Soussigné, Ministre des Affaires Etrangères de Russie, dûment autorisé à cet effet, a l'honneur de faire à son Excellence Sir Charles Scott, Ambassadeur Britannique, la déclaration suivante:

La Russie et la Grande-Bretagne, animées du sincère désir d'éviter en Chine toute cause de conflits dans les questions où leurs intérêts se rencontrent et prenant en considération la gravitation économique et géographique de certaines parties de cet Empire, sont convenues de ce qui suit: —

1. La Russie s'engage à ne pas réclamer pour son compte et en faveur de sujets Russes ou autres des Concessions quelconques de chemins de fer dans le bassin du Yang-tzé et à ne pas contrecarrer directement ou indirectement dans cette région les demandes de Concessions de chemin de fer, appuyées par le Gouvernement Britannique.

2. La Grande-Bretagne, de son côté, s'engage à ne pas réclamer pour son compte et en faveur de sujets Britanniques ou autres des Concessions quelconques de chemins de fer au nord du Grand Mur de Chine et à ne pas contrecarrer directement ou indirectement dans cette région les demandes de Concessions de chemins de fer, appuyées par le Gouvernement Russe.

Les deux Parties Contractantes, n'ayant nullement en vue de porter une atteinte quelconque aux droits souverains de la Chine, ainsi qu'aux Traités existants, ne manqueront pas de faire part au Gouvernement Chinois du présent arrangement qui, en écartant toute cause de complication entre elles, est de nature à consolider la paix dans l'Extrême-Orient et à servir aux intérêts primordiaux de la Chine elle-même.

Le Soussigné, &c.

(Signé) Comte *Mouravieff.*

Saint-Pétersbourg, le 16 (28) avril 1899.

Sir C. Scott to Count Mouravieff.

In order to complete the notes exchanged this day respecting the partition of spheres for Concessions for the construction and working of railways in China, it has been agreed to record in the present additional note the arrangement arrived at with regard to the line Shanghaikuan-Newchwang, for the construction of which a loan has been already contracted by the Chinese Government with the Shanghae-Hong Kong Bank, acting on behalf of the British and Chinese Corporation.

The general arrangement established by the above-mentioned notes is not to infringe in any way the rights acquired under the said Loan Contract, and the Chinese Government may appoint both an English engineer and an European accountant to supervise the construction of the line in question, and the expenditure of the money appropriated to it.

But it remains understood that this fact cannot be taken as constituting a right of property or foreign control, and that the line in question is to remain a Chinese line, under the control of the Chinese Government, and cannot be mortgaged or alienated to a non-Chinese Company.

As regards the branch line from Siaoheichan to Sinminting, in addition to the aforesaid restrictions, it has been agreed that it is to be constructed by China herself, who may permit European — not necessarily British — engineers to periodically inspect it, and to verify and certify that the work is being properly executed.

The present special Agreement is naturally not to interfere in any way with the right of the Russian Government to support, if it thinks fit, applications of Russian subjects or establishments for Concessions for railways, which, starting from the main Manchurian line in a south-westerly direction, would traverse the region in which the Chinese line terminating at Sinminting and Newchwang is to be constructed.

(Signed) *Charles S. Scott.*

St. Petersburgh, April 28, 1899.

Count Mouravieff to Sir C. Scott.

Pour compléter les notes échangées aujourd'hui concernant la répartition des sphères de Concessions et d'exploitation des chemins de fer en Chine, il a été convenu de consigner dans la présente note additionnelle l'Accord survenu au sujet de la ligne Shanghaïkuan-Newchwang, pour la construction de laquelle un emprunt a déjà été contracté par le Gouvernement Chinois à la Banque de Shanghaï-Hong Kong, agissant au nom de la "British and Chinese Corporation."

L'arrangement général, établi par les notes précitées, ne portera aucune atteinte aux droits acquis en vertu du Contrat de l'emprunt susdit, et il sera loisible au Gouvernement Chinois de nommer tant un ingénieur Anglais qu'un comptable Européen pour surveiller la construction de la ligne de chemin de fer en question et la dépense des sommes y affectées.

Mais il reste bien entendu que ce fait ne saurait constituer un droit de propriété ou de contrôle étranger et que la ligne en question doit rester Chinoise, soumise au contrôle du Gouvernement Chinois, et ne pourra être engagée ou aliénée à une Compagnie non Chinoise.

Pour ce qui est de l'embranchement, se dirigeant de Siaoheïchan à Sinminting, outre les restrictions susdites, il a été convenu qu'il sera construit par la Chine elle-même, qui pourra admettre des ingénieurs Européens — pas nécessairement Anglais — pour l'inspecter périodiquement, vérifier et certifier que les travaux sont dûment exécutés.

Le présent Accord spécial ne saurait, naturellement, entraver d'aucune façon le droit du Gouvernement Russe d'appuyer, s'il le juge opportun, des demandes de sujets ou établissements Russes, relatives à des Concessions de chemins de fer qui, partant de la ligne principale de Mandchourie et se dirigeant au sud-ouest, traverseraient la région où sera construite la ligne Chinoise aboutissant à Sinminting et Newchwang.

Le Soussigné, &c.

(Signé) Comte *Mouravieff.*

Saint-Pétersbourg, le 16 (28) avril 1899.

22.

CHINE, RUSSIE.

Arrangement conclu entre le Gouvernement chinois et la Banque russo-chinoise, concernant la construction du chemin de fer de la Mandchourie; du 4/16 décembre 1896.

Parliamentary Papers. Presented to both Houses of Parliament by Command of Her Majesty. March 1898. Russia. No. 1. 1898.

Sir N. O'Conor to the Marquess of Salisbury.
(Received December 28.)

St Petersburgh, December 25, 1896.

My Lord,

I have the honour to inclose herewith to your Lordship, in translation, a copy of the conditions of the Agreement between the Chinese Government and the Russo-Chinese Bank respecting the Russo-Chinese Manchurian Railway, which has been published in the Official Gazette.

I have, &c.

(Signed) *N. R. O'Conor.*

Inclosure.

Extract from the Official Gazette („Bulletin des Lois") of December, 11 (23), 1896.

(Translation.)

The Minister of Finances presented on the 8th (20th) December, 1896, to the Ruling Senate for publication a copy of the Statutes of the Chinese Eastern Railway Company, which were Imperially confirmed on the 4th (16th) Deeember, 1896.

Statutes of the Chinese Eastern Railway Company.

Formation of the Company.

§ 1. On the strength of the Agreement concluded on the 27th August (8th September), 1896, by the Imperial Chinese Government with the Russo-Chinese Bank, a Company is formed, under the name of the „Eastern Chinese Railway Company," for the construction and working of a railway within the confines of China, from one of the points on the western borders of the Province of Wei-Lun-Tsian to one of the points on the eastern borders of the Province of Ghirin, and for the connection of this railway with those branches which the Imperial Russian Government will construct to the Chinese frontier from Trans-Baikalia and the Southern Ussuri lines.

Observation.

The Company is empowered, subject to the sanction of the Chinese Government, to exploit, in connection with the railway, or independently of it, coal mines, as also to exploit in China other enterprises — mining, industrial, and commercial. For the working of these enterprises, which may be independent of the railway, the Company shall keep accounts separate from those of the railway.

The formation of the Company shall be undertaken by the Russo-Chinese Bank.

With the formation of the Company all rights and obligations are transferred to it in regard to the coustruction and working of the line ceded in virtue of the above-named Agreement of the 27th August (8th September), 1896.

The Company shall be recognized as formed on the presentation to the Minister of Finances of a Warrant of the State Bank, certifying the payment of the first instalment on the shares. In any case, such payment must be made not later than two months from the day of confirmation of the present Statutes.

The succeeding instalments on the shares shall be paid in such order of gradation that the shares shall be fully paid up at their nominal value not later than one year from the day of formation of the Company.

Owners of shares of the Company may only be Russian and Chinese subjects.

Term of Concession.

§ 2. In virtue of the Agreement with the Chinese Government the Company shall retain possession of the Chinese Eastern Railway during the course of eighty years from the day of the opening of traffic along the whole line.

Obligation towards the Russian Government.

§ 3. In recognition that the enterprise of the Chinese Eastern Railway will be realized only owing to the guarantee given by the Russian Government in regard to the revenue of the line for covering working expenses, as well as for effecting the obligatory payments on the bonds (§ 11, 16), the Company on its part binds itself to the Russian Government, during the whole term of the Concession, under the following obligatious:

A) The Chinese Eastern Railway, with all its appurtenances and rolling-stock, must be always maintained in full order for satisfying all the requirements of the service of the line in regard to the safety, comfort, and uninterrupted conveyance of passengers and goods.

B) The traffic on the Chinese Eastern line must be maintained conformably with the degree of traffic on the Russian railway lines adjoining the Chinese line.

C) The trains of all descriptions running between the Russian Trans-Baikal and Ussuri lines shall be received by the Chinese Eastern Railway and dispatched to their destination, in full complement, without delay.

D) All through trains, both passenger and goods, shall be dispatched by the Eastern Chinese Railway at rates of speed not lower than those which schall be adopted on the Siberian Railway.

E) The Chinese Eastern Railway is bound to establish and maintain a telegraph along the whole extent of the line, and to connect it with the telegraph wire of the Russian adjoining railways; and to receive and dispatch without delay through telegrams sent from one frontier station of the line to another, as also telegrams sent from Russia to China, and conversely.

F) Should, with the development of traffic on the Chinese Eastern Railway, its technical organization prove insufficient for satisfying the requirements of a regular and uninterrupted passenger and goods traffic, the Chinese Eastern Railway shall immediately, on receipt of a notification on the part of the Russian railways to augment its capacity to a corresponding degree, adopt the necessary measures for further developing its technical organization and the traffic on it. In the event of a difference of opinion arising between the above-mentioned railways, the Chinese Eastern Railway shall submit to the decision of the Russian Minister of Finances. If the means at the command of the Chinese Eastern Railway prove insufficient for carrying out the necessary work of its development, the Board of Management of the railway may at all times apply to the Russian Minister of Finances for pecuniary assistance on the part of the Russian Government.

G) For all transit conveyance of passengers and goods, as also for the transmission of telegrams, there will be established by agreement of the Company with the Russian Government for the whole term of duration of the Concession.

§ 2. Maximum Tariffs, which cannot be raised without the consent of the Russian Government during the whole term above referred to. Within these limits the Tariffs of direct communication, both for railway carriage and telegrams, will be fixed by the Board of Management of the Company on the strength of a mutual agreement with the Russian Minister of Finances.

H) The Russian letter and parcels post, as also the officials accompanying the same, shall be carried by the Chinese Eastern Railway free of charge.

For this purpose the Company shall set apart in each ordinary passenger train a carriage compartment of 3 fathoms in length. The Russian postal authorities may, moreover, if they deem it necessary, place on the line postal carriages, constructed by them at their own cost; and the repair, maintenance (interior fittings excepted), as well as the running of such carriages with the trains shall be free of charge and at the cost of the railway.

The above-mentioned engagements, by which, as already stated, the grant of a guarantee by the Russian Government is conditioned and the consequent realization of the enterprise of the Chinese Eastern Railway shall be binding on the railway until the same, after the expiration of the 80 years' term of the Concession shall, without payment, become the property of the Chinese Government (§ 29). The redemption of the line from the Company before the above-mentioned term in accordance with § 30 of the present Statutes shall not in any way diminish the effect of the above specified engagements, and these latter, together with the railway, shall be transferred to its new proprietor.

In the same manner, during the course of the whole 80 years' term of the Concession (§ 2), the following privileges granted to the railway by the Imperial Chinese Government shall remain in force:

a) Passengers' luggage, as also goods, carried in transit from one Russian station shall not be liable to any Chinese customs duties, and shall be exempt from all internal Chinese dues and taxes.

b) The rates for the carriage of passengers and goods, for telegrams, &c., shall be free from all Chinese taxes and dues.

c) Goods imported from Russia into China by rail and exported from China to Russia in the same manner shall pay respectively an import or export Chinese duty to the extent of one-third less as compared with the duty imposed at Chinese seaport custom-houses.

d) If goods imported by the railway are destined for conveyance inland they shall in such case be subject to payment of transit duty to the extent of one-half of the import duty levied on them, and they shall

then be exempted from any additional imposts. Goods which shall not have paid transit duty shall be liable to payment of all established internal carrier and lits-zin dues.

Immunities of the Company in regard to Russian Customs Duties.

§ 4. In regard to the place of acquisition of materials for the requirements of the railway, the Company shall not be liable to any limitations. If materials be obtained beyond the confines of Russia they shall, on importation through Russian territory, be freed from payment of Russian customs duties.

Technical Conditions. Periods of Time for the Commencement and Termination of the Work.

§ 5. The breadth of the railway track must be the same as that of the Russian lines (5 feet).

The Company must commence the work not later than the 16th August 1897, and conduct it in such a manner that the whole line shall be completed not later than six years from the time when the direction of the line shall be finally determined and the necessary land assigned to the Company.

When tracing the line of the railway, cemeteries and graves, as also towns and villages, must, so far as possible, be left aside of the railway.

When effecting the connection, in accordance with § 1 of these Statutes, of the Chinese Eastern Railway with the Russian Trans-Baikal and South Ussuri lines, the Company shall have the right, with a view of reduction of expenditure, of abstaining from building its own frontier stations, and of utilizing the frontier stations of the above-named Russian lines. The conditions on which they shall be so utilized shall be determined by agreement of the Board of the Company with the Boards of the respective railways.

Tariffs.

§ 6. The Tariffs for the carriage of passengers and goods, as also for supplementary carriage rates, shall be determined by the Company itself, within the limits indicated in § 3.

Order of Examination of Legal Suits, and the Establishment of Rules for Railway Conveyance.

§ 7. Crimes, litigation, &c., on the territory of the Chinese Eastern Railway shall be dealt with by local authorities, Chinese and Russian, on the basis of existing Treaties.

In regard to the carriage of passengers and goods, the responsibility for such conyeyance, the lapse of time for claims, the order of recovering money from the railway when adjudged, and the relations of the railway to the public shall be defined in rules drawn up by the Company and established before the opening of the railway traffic; and these rules shall be framed in accordance with those existing on Russian railways.

Maintennance of Security and Order on the Railway.

§ 8. The Chinese Government has undertaken to adopt measures for securing the safety of the railway and of all employed on it against any extraneous attacks.

The preservation of order and decorum on the lands assigned to the railway and its appurtenances shall be confided to police agents appointed by the Company.

The Company shall for this purpose draw up and establish police regulations.

Foundation Capital of the Company.

§ 9. The whole amount of the capital of the Company shall be determined according to the cost of construction calculated on the basis of estimates framed when the survey of the line was carried out. The foundation capital shall be charged with (a) the payment of interest and amortization of the foundation capital during the construction of the railway; (b) the purchase from the Russian Government of the results of the surveys of the direction of the railway to Manchuria which were made by Russian engineers; the sum payable for these surveys will be determined by agreement of the Russian Minister of Finances with the Company.

The capital of the Company shall be formed by the issue of shares and bonds.

Share Capital.

§ 10. The share capital of the Company shall be fixed at 5,000,000 nominal credit roubles, and divided into 1,000 shares at 5,000 nominal credit roubles.

The shares are to be issued at their nominal value.

The guarantee of the Russian Government does not extend to them.

Bond Capital.

Guarantee of Russian Government on Bonds.

§ 11. The remaining portion of the capital of the Company will be formed by the issue of bonds, The bonds will be issued in measure of requirement, and each time with the special sanction of the Minister of Finances. The nominal amount and value of each separate issue of bonds, the time and condition of the issue, as also the form of these bonds shall be subject to the sanction of the Minister of Finances.

The Russian Government will guarantee the interest on and amortization of the bonds.

For the realization of these bonds the Company must have recourse to the Russo-Chinese Bank, but the Russian Government reserves to itself the right of appropriating the bond loan at a price which shall be deter-

mined between the Company and the bank, and to pay to the Company the agreed amount in ready money.

Guarantee of Realized Bond Capital.

§ 12. As payments are received for bonds guaranteed by the Russian Government, the Company shall be bound to keep such sums, or interest-bearing securities purchased with the same by permission of the Russian Minister of Finances, under the special supervision of the Russian Ministry of Finances.

Out of the above receipts the Company shall have the right to make the following payments:

a) According to actual fulfilment of the work in progress and execution of orders, and at the time when various expenditure shall become necessary, such payments to be made on the scale and on the conditions specified in the working estimates.

b) During the construction of the line, of interest, as it becomes due, on the bonds issued by the Company, subject to the conditions of their issue, and the Company shall pay the sums necessary for the above purpose within the limits of the amount realized by it in the emission of its bonds.

Shares.

§ 13. On the payment of the first allotment on the shares, the founders shall receive temporary certificates on which subsequently, when the Board of Management of the Company shall have been formed, the receipt of the further instalments on the shares will be inscribed.

When the shares shall be fully paid up, the temporary certificates issued to the founders shall be replaced by shares.

The shares of the Company are issued to bearer, under the signature of not fewer than three members of the Board of Management. To the shares will be attached a coupon-sheet for the receipt once yearly under them of any dividend that may be payable. On the coupon-sheets becoming exhausted new sheets will be issued. A dividend on the shares out of the net profits of any year, supposing such accrue, shall be payable on the adoption by the general meeting of shareholders of the annual Report for that year, and the dividend shall be payable as the offices of the Company, or at such places which it may indicate.

The Company shall notify for general information in the Official Gazette and in the "Finance Messenger", as also in one of the Chinese newspapers, the extent and place of payment of the dividend.

Reserve Capital.

§ 14. The reserve capital is destined

a) For the capital repair of the railway, its buildings and appurtenances.

b) For defraying extraordinary expenditure of the Company in repairing the railway and its appurtenances.

The reserve capital of the Company is formed out of annual sums put aside from the net profits of the working of the railway (§ 17).

The reserve capital must be kept in Russian State interest-bearing securities, or in railway bonds guaranteed by the Russian Government.

At the expiration of the term of possession of the railway by the Company, the reserve capital shall be first of all employed in the payment of the debts of the Company, including among them sums due to the Russian Government, if such exist; and after the debts of the Company shall have been paid, the remainder of the reserve capital shall be divided among the shareholders. In the event of the redemption of the railway by the Chinese Government, the reserve capital becomes the property of the shareholders.

Net Revenue.

§ 15. The net revenue of the Company shall be the remainder of the gross receipts after deduction of working expenses. Under these expenses are classed

a) General outlays, including assignments towards pension and relief funds, if such be established on the line.

b) Maintenance of the staff of the Board of Management, and of all the services; as also the maintenance of employés and labourers not on the permanent list.

c) Outlays for materials and articles used for the railway, as also expenditure in the shape of remuneration for using buildings, rolling-stock, and other various requisites for the purposes of the railway.

d) Outlays for the maintenance, repair, and renewal of the permanent way, works of construction, buildings, rolling-stock, and other appurtenances of the railway.

e) Expenditure connected with the adoption of the measures and instructions of the Board of Management for insuring the safety and regularity of the railway service.

f) Expenditure for the improvement and development of the railway, as also for creating and developing its resources.

Additional Payments by the Russian Government under the Guarantee, and the Order of Settlement of Accounts between the Company and the Russian Government in respect of these additional Payments.

§ 16. Should the gross receipts of the railway prove insufficient for defraying the working expenses and for meeting the yearly payments due on the bonds, the Company will receive the deficient sum from the Russian Government, through the Russian Minister of Finances. The payments referred to will be made to the Company as advances, at a rate of interest of 6 per cent. per annum. Sums paid in excess to the Company in consequence of its demands and on account of the guarantee will be deducted from succeeding money payments.

On the presentation to the general meeting of shareholders of the annual Report of the working of the railway for a given year, the Com-

pany shall at the same time submit to the general meeting, for confirmation, a detailed statement of the sums owing by the Company to the Russian Government, with the interest that has accrued thereon. On the confirmation of this statement by the general meeting, the Board of Management shall deliver to the Russian Government an acknowledgment of the Company's debt, to the full determined amount of the same, and this acknowledgment, until its substitution by another, shall bear annually interest at the rate of 6 per cent.

The acknowledgment above mentioned, given by the Board of Management to the Russian Government, shall not be subject to bill or deed stamp tax.

Subjects of minor importance are dealt with in the following sections:

§ 17. Distribution of net profits of the railway.

§ 18. Functions of Board of Management, the seal of which will be at Peking and St. Petersburgh.

§ 19. Constitution of the Board, which is to consist of nine members, elected by the shareholders. The Chairman is to be appointed by the Chinese Government. The Vice-Chairman is to be chosen by the members of the Board from among themselves.

§ 20. Order of transaction of the business of the Board.

§ 21. General meetings of shareholders, and the subjects that shall come under their notice.

§ 22. Order of convening general meetings.

§ 23. Conditions under which general meetings shall be recognized as legally held.

§ 24. Participation of shareholders in proceeding of general meetings.

§ 25. Local management of works of construction.

§ 26. Local management of railway when in working order.

§ 27. Questions to be submitted for confirmation by Russian Minister of Finances.

§ 28. Committee of audit.

Gratuitous Entrance into Possession of Railway by Chinese Government.

§ 29. In accordance with the Agreement concluded with the Chinese Government, the latter, after the expiration of eighty years of possession of the railway by the Company, enters into possession of it and its appurtenances.

The reserve and other funds belonging to the Company shall be employed in paying the money due to the Russian Government under the guarantee (§ 16), and in satisfaction of other debts of the Company, and the remainder shall be distributed among the shareholders.

Any money that may remain owing by the Company to the Russian Government at the expiration of eighty years in respect of the guarantee shall be written off. The Russo-Chinese Bank will incur no responsibility in respect of the same.

Right of the Chinese Government to acquire the Railway on the expiration of thirty-six Years.

§ 30. In accordance with the Agreement concluded with the Chinese Government, on the expiration of thirty-six years from the time of completion of the whole line and its opening for traffic, the Chinese Government has the right of acquiring the line, on refunding to the Company in full all the outlays made on it, and on payment for everything done for the requirements of the railway, such payments to be made with accrued interest.

It follows as a matter of course that the portion of the share capital which has been amortized by drawing, and the part of the debt owing to the Russian Government under the guarantee, and repaid out of the net profits (§ 17) will not constitute part of the purchase-money.

In no case can the Chinese Government enter into possession of the railway before it has lodged in the Russian State Bank the necessary purchase-money.

The purchase-money lodged by the Chinese Government shall be employed in paying the debt of the Company under its bonds, and all sums, with interest, owing to the Russian Government, the remainder of the money being then at the disposal of the shareholders.

23.

FRANCE, SIAM.

Convention concernant les relations politiques des Parties contractantes; du 13 février 1904.

Documents parlementaires. Chambre des députés. France.

Art. 1er. La frontière entre le Siam et le Cambodge part, sur la rive gauche du Gand Lac, de l'embouchure de la rivière Stung Roluos, elle suit le parallèle de ce point dans la direction de l'est jusqu'à la rencontre de la rivière Prék Kompong Tiam, puis, remontant vers le nord, elle se confond avec le méridien de ce point de rencontre jusqu'à la chaîne de montagnes Pnom Dang Rek. De là elle suit la ligne de partage des eaux entre les bassins du Nam Sen et du Mékong, d'une part, et du Nam Moun, d'autre part, et rejoint la chaîne Pnom Padang dont elle suit la crête vers l'est jusqu'au Mékong. En amont de ce point, le Mékong reste la frontière du royaume de Siam, conformément à l'article 1er du traité du 3 octobre 1893.

Art. 2. Quant à la frontière entre le Luang Prabang, rive droite, et les provinces de Muang Phichaï et Muang Nan, elle part du Mékong à son confluent avec le Nam Huonget, suivant le thalweg de cette rivière

jusqu'à son confluent avec le Nam Tang, remontant ensuite le cours dudit Nam Tang, elle atteint la ligne de partage des eaux entre les bassins du Mékong et celui de la Menam en un point situé près de Pou Dène Dine. A partir de ce point, elle remonte vers le Nord, suivant la ligne de faîte entre les deux bassins jusqu'aux sources de la rivière Nam Kop dont elle suit le cours jusqu'à sa rencontre avec le Mékong.

Art. 3. Il sera procédé à la délimitation des frontières entre le royaume de Siam et les territoires formant l'Indo-Chine française. Cette délimitation sera effectuée par des commissions mixtes composées d'officiers nommés par les deux pays contractants. Le travil portera sur la frontière déterminée par les articles 1 et 2, ainsi que sur la région comprise entre le Grand Lac et la mer.

En vue de faciliter les travaux des commissions et en vue d'éviter toute possibilité de difficulté dans la délimitation de la région comprise entre le Grand Lac et la mer, les deux Gouvernements se mettront d'accord, avant la nomination des commissions mixtes, pour fixer les points principaux de la délimitation dans cette région, notamment le point où la frontière atteindra la mer.

Les commissions mixtes seront nommées et commenceront leurs travaux dans les quatre mois après la ratification de la présente convention.

Art. 4. Le gouvernement siamois renonce à toute prérogative de suzeraineté sur les territoires du Luang Prabang situés sur la rive droite du Mékong.

Les bateaux de commerce et les trains de bois appartenant à des Siamois auront le droit de naviguer librement sur la partie du Mékong traversant le territoire du Luang Prabang.

Art. 5. Aussitôt que l'accord prévu par l'article 3, paragraphe 2, et relatif à la délimitation de la frontière entre le Grand Lac et la mer, aura été établi, et aussitôt qu'il sera officiellement notifié aux autorités françaises que les territoires résultant de cet accord et les territoires situés à l'Est de la frontière, telle qu'elle est indiquée aux articles 1 et 2 du présent traité, se trouvent à leur disposition, les troupes françaises qui occupent provisoirement Chantaboun, en vertu de la convention du 3 octobre 1893, quitteront cette ville.

Art. 6. Les dispositions de l'article 4 du traité du 3 octobre 1893 seront remplacées par celles qui suivent:

Sa Majesté le roi de Siam prend l'engagement que les troupes qu'elle reverra ou entretiendra dans tout le bassin siamois de Mékong seront toujours des troupes de nationalité siamoise, commandées par des officiers de cette nationalité. Il n'est fait exception à cette règle qu'en faveur de la gendarmerie siamoise, actuellement commandée par des officiers danois. Dans le cas où le gouvernement siamois voudrait substituer à ces officiers des officiers étrangers appartenant à une autre nationalité, il devrait s'entendre au préalable avec le Gouvernement français.

En ce qui concerne les provinces de Siem Reap, de Battambang et de Sisophon, le gouvernement siamois s'engage à n'y entretenir que les

contingents de police nécessaires pour le maintien de l'ordre. Ces contingents seront recrutés exclusivement sur place parmi les indigènes.

Art. 7. A l'avenir, dans la partie siamoise du bassin du Mékong, le gouvernement royal, s'il désire exécuter des ports, canaux, chemins de fer (notamment des chemins de fer destinés à relier la capitale à un point quelconque du bassin), se mettra d'accord avec le gouvernement français, dans le cas où ces travaux ne pourraient être exécutés exclusivement par un personnel et avec des capitaux siamois. Il en serait naturellement de même pour l'exploitation desdites entreprises.

En ce qui concerne l'usage des ports, canaux, chemins de fer, aussi bien dans la partie siamoise du bassin du Mékong que dans le reste du royaume, il est entendu qu'aucun droit différentiel ne pourra être établi contrairement au principe de l'égalité commerciale inscrite dans les traités signés par le Siam.

Art. 8. En exécution de l'article 6 du traité du 3 octobre 1903, des terrains d'une superficie à déterminer seront concédés par le gouvernement siamois au gouvernement de la République aux points suivants situés sur la rive droite du Mékong:

Xieng-Khan, Non Khay, Muong Saniabouri, embouchure du Nam-Khan (rive droite ou rive gauche), Bang-Mouk-Dahan, Kemmarat et embouchure du Nam-Mour (rive droite ou rive gauche).

Les deux gouvernements s'entendront pour dégager le cours de Nam-Moun, entre son confluent avec le Mékong et Pimoun, des obstacles qui gênent la navigation. Dans le cas où ces travaux seraient reconnus inexécutables ou trop coûteux, les deux gouvernements se concerteraient pour l'établissement d'une voie terrestre de communication entre Pimoun et le Mékong.

Ils s'entendront également pour établir entre Bassac et la frontière du Luang Prabang, telle qu'elle résulte de l'article 2 du présent traité les lignes ferrées qui seraient reconnues nécessaires pour suppléer au défaut de navigabilité du Mékong.

Art. 9. Dès à présent, il est convenu que les deux gouvernements faciliteront l'établissement d'une voie ferrée reliant Pnom-Penh à Batbang. La construction et l'exploitation seront faites soit par les gouvernements eux-mêmes, chacun d'eux se chargeant de la partie qui est sur son territoire, soit par une compagnie franco-siamoise agréée par les deux gouvernements.

Les deux gouvernements sont d'accord sur la nécessité de faire des travaux pour améliorer le cours de la rivière de Battambang entre le Grand-Lac et cette ville. A cet effet, le gouvernement français est prêt à mettre à la disposition du gouvernement siamois les agents techniques dont celui-ci pourrait avoir besoin tant en vue de l'exécution que de l'entretien desdits travaux.

Art. 10. Le Gouvernement de Sa Majesté Siamoise accepte les listes des protégés français telles qu'elles existent actuellement, à l'exception des individus dont il serait reconnu, de part et d'autre, que l'inscription

a été indûment obtenue. Copie de ces listes sera communiquée aux autorités siamoises par les autorités françaises.

Les descendants des protégés ainsi maintenus sous la juridiction française n'auront plus le droit de réclamer leur inscription, s'ils ne rentrent pas dans la catégorie des personnes visées à l'article suivant de la présente convention.

Art. 11. Les personnes d'origine asiatique nées sur un territoire soumis à la domination directe ou placé sous le protectorat de la France, sauf celles qui ont fixé leur résidence au Siam avant l'époque où le territoire dont elles sont originaires a été placé sous cette domination ou sous ce protectorat, auront droit à la protection française.

La protection française sera accordée aux enfants de ces personnes, mais ne s'étendra pas à leurs petits-enfants.

Art. 12. En ce qui concerne la juridiction à laquelle seront désormais, soumis, sans aucune exception, tous les Français et protégés français au Siam, les deux gouvernements conviennent de substituer aux dispositions existantes les dispositions suivantes:

1° En matière pénale, les Français ou protégés français ne seront justiciables que de l'autorité judiciaire française;

2° En matière civile, tout procès intenté par un Siamois contre un Français ou protégé français sera porté devant le tribunal consulaire français.

Tout procès, dans lequel le défendeur sera siamois, sera porté devant la cour siamoise des causes étrangères instituée à Bangkok.

Par exception, dans les provinces de Xiengmaï, Lakhon, Lampoun et Nan, tous les procès civils et criminels intéressant les ressortissants français seront portés devant la cour internationale siamoise.

Mais il est entendu que, dans tous ces procès, le consul de France aura le droit d'assister aux audiences ou de s'y faire représenter par un délégué dûment autorisé et de formuler toutes les observations qui lui sembleront convenables dans l'intérêt de la justice.

Au cas où le défendeur serait Français ou protégé français, le consul de France pourra, à tout moment au cours de la procédure, s'il le juge opportun et moyennant une réquisition écrite, évoquer l'affaire en cause.

Celle-ci sera alors transférée au tribunal consulaire français qui sera, à partir de ce moment, seul compétent et auquel les autorités siamoises seront tenues de prêter le concours de leurs bons offices,

Les appels des jugements rendus tant par la cour des causes étrangères que par la cour internationale pour les quatre provinces susmentionnées, seront portés devant la cour d'appel de Bangkok.

Art. 13. En ce qui concerne, pour l'avenir, l'admission à la protection française des Asiatiques qui ne sont pas nés sur un territoire soumis à l'autorité directe ou au protectorat de la France, ou qui ne se trouvent pas légalement naturalisés, le Gouvernement de la République jouira de droits égaux à ceux que le Siam accorderait à toute autre puissance.

Art. 14. Les dispositions des anciens traités, accords et conventions entre la France et le Siam, non modifiées par la présente convention restent en pleine vigueur.

Art. 15. En cas de difficultés d'interprétation de la présente convention, rédigée en français et en siamois, le texte français fera seul foi.

Art. 16. La présente convention sera ratifiée dans un délai de quatre mois à partir du jour de la signature, ou plus tôt si faire se peut.

24.

JAPON, CORÉE.

Traité d'amitié; signé à Söul, le 23 février 1904.

D'après une Publication officielle.

Mr. Hayashi, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of Japan and Major General Yi Tchi Yong, Minister of State for Foreign Affaires at interim of His Majesty the Emperor of Corea, being respectively duly empowered for the purpose, have agreed upon the following Articles:

Article 1.

For the purpose of maintaining a permanent and solid friendship between Japan and Corea and firmly establishing peace in the Far East, the Imperial Government of Corea shall place full confidence in the Imperial Government of Japan and adopt the advice of the latter in regard to improvements in administration.

Article 2.

The Imperial Government of Japan shall in a spirit of firm friendship ensure the safety and repose of the Imperial House of Corea.

Article 3.

The Imperial Government of Japan definitively garantee the independence and territorial integrity of the Corean Empire.

Article 4.

In case the welfare of the Imperial House of Corea or the territorial integrity of Corea is endangered by aggression of a third Power or internal disturbances the Imperial Government of Japan shall immediately take such necessary measures as the circumstances require and in such cases the Imperial Government of Corea shall give full facilities to promote the action of the Imperial Japanese Government.

The Imperial Government of Japan may, for the attainment of the above mentioned object, occupy, when the circumstances require it, such places as may be necessary from strategical points of view.

Article 5.

The Governments of the two countries shall not in future, without mutual consent, conclude with a third Power such an arrangement as may be contrary to the principles of the present protocol.

Article 6.

Details in connexion with the present protocol shall be arranged as the circumstances may require, between the Representative of Japan and the Minister of State of Foreign Affairs of Corea.

25.

JAPON, CORÉE.

Arrangement destiné à assurer l'ascendant du Japon dans les affaires de Corée; signé au courant de l'année 1904.

Japanischer Staatsanzeiger.

Japanisch-Koreanisches Abkommen.

Am 22. v. M. haben die Vertreter der Japanischen und der Koreanischen Regierung das nachstehende Abkommen unterzeichnet:

1. Die Koreanische Regierung hat einen von der japanischen Regierung empfohlenen Japaner als ihren finanziellen Ratgeber anzustellen und in allen auf die Finanzwirtschaft bezüglichen Angelegenheiten die Ansicht dieses Ratgebers einzuholen.

2. Die Koreanische Regierung hat einen von der Japanischen Regierung empfohlenen Ausländer als Ratgeber für Auswärtige Angelegenheiten anzustellen und in alle wichtigen, die internationalen Beziehungen betreffenden Fragen seine Ansicht einzuholen.

3. Die Koreanische Regierung hat beim Abschluss internationaler Verträge sowie in anderen wichtigen internationalen Fragen, wie bei der Gewährung von Sonderrechten an Ausländer oder beim Abschluss von Verträgen etc. mit solchen sich vorher mit der Japanischen Regierung ins Benehmen zu setzen.

26.

AFRIQUE DU SUD.

Documents concernant l'annexion de la République Sud-Africaine et de l'Etat-libre d'Orange à la Grande-Bretagne; février / novembre 1900.

State Papers. V. XCII.

Proclamation.

To the Burghers of the Orange Free State:

The British troops under my command having entered the Orange Free State, I feel it my duty to make known to all Burghers the cause of our coming, as well as to do all in my power to put an end to the devastation caused by this war, so that, should they continue the war, the inhabitants of the Orange Free State may not do so ignarantly, but with full knowledge of their responsibility before God for the lives lost in the campaign.

Before the war began the British Government, which had always desired and cultivated peace and friendship with the people of the Orange Free State, gave a solemn assurance to President Steyn that, if the Orange Free State remained neutral, its territory would not be invaded, and its independence would be at all times fully respected by Her Majesty's Government.

In spite of that declaration, the Government of the Orange Free State was guilty of a wanton and unjustifiable invasion of British territory.

The British Government believes that this act of aggression was not committed with the general approval and free will of a people with whom it has lived in complete amity for so many years. It believes that the responsibility rests wholly with the Government of the Orange Free State, acting, not in the interests of the country, but under mischievous influences from without. The British Government, therefore, wishes the people of the Orange Free State to understand that it bears them no ill-will, and, as far as is compatible with the successful conduct of the war, and the re-establishment of peace in South Africa, it is anxious to preserve them from the evils brought upon them by the wrongful action of their Government.

I therefore warn all Burghers to desist from any further hostility towards Herr Majesty's Government and the troops under my command, and I undertake that any of them, who may so desist and who are found staying in their homes and quietly pursuing their ordinary occupations, will not be made to suffer in their persons or property on account of their having taken up arms in obedience to the order of their Government. Those, however, who oppose the forces under my command,

or furnish the enemy with supplies or information will be dealt with according to the customs of war.

Requisitions for food, forage, fuel, or shelter, made on the authority of the officers in command of Her Majesty's troops, must be at once complied with; but everything will be paid for on the spot, prices being regulated by the local marked rates. If the inhabitants of any district refuse to comply with the demands made on them, the supplies will be taken by force, a full receipt being given.

Should any inhabitant of the country consider that he or any member of his household has been unjustly treated by any officer, soldier, or civilian attached to the British army, he should submit his complaint, either personally or in writing, to my head-quarters or to the head-quarters of the nearest General Officer. Should the complaint on inquiry, be substantiated, redress will be given.

Orders have been issued by me prohibiting soldiers from entering private houses, or molesting the civil population on any pretext whatever and every precaution has been taken against injury to property on the part of any person belonging to or connected with, the army.

February 1900.

Roberts,
Field-Marshal, Commanding-in-chief, South Africa.

Proclamation.

Whereas it is deemed expedient and necessary for the welfare of the Orange Free State that the railway service shall be resumed in the aforesaid Republic, as far as circumstances permit;

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar, K.P., G.C.B., G.C.S.I.. G.C.I.E., V.G.. Field-Marshal and Commanding-in-chief the British forces in South-Africa, do hereby appoint Lieutenant-Colonel Edouard Percy Cranwill Girouard, D.S.O., Director of Railway, South African Field Force, Administrator of the State Railway in such portions of the Orange Free State as have been or may hereafter be occupied by British troops. And I do hereby order that the railway and railway-telegraph services shall be resumed in the portions of the aforesaid Republic, already referred to, from the 19th day of March, 1900, under the existing Laws and Conventions of the Orange Free State, subject to such alterations as may from time to time be notified, and to the requirements of the army.

God save the Queen.

Given under my hand at Bloemfontein, this 13th day of March, 1900.

Roberts,
Field-Marshal, Commanding-in-chief British Forces in South Africa.

Proclamation.

To the Burghers of the Orange Free State:

In continuation of the Proclamation which I issued when the British troops under my command entered the Orange Free State, in which I warned all Burghers to desist from any further hostility, and undertook that those of them who might so desist, and were staying in their homes and quietly pursuing their ordinary occupations, would not be made to suffer in their persons or property on account of their having taken up arms in obedience to the order of their Government, I now make known to all Burghers that I have been authorized by the Government of Her Most Gracious Majesty the Queen to offer the following terms to those of them who have been engaged in the present war:

All Burghers who have not taken a prominent part in the policy which has led to the war between Her Majesty and the Orange Free State, or commanded any forces of the Republik, or commandeered or used violence to any British subjects, and who are willing to lay down their arms at once, and to bind themselves by an oath to abstain from further participation in the war, will be given passes to allow them to return to their homes, and will not be made prisoners of war, nor will their property be taken from them.

Government House, Bloemfontein, 15th March, 1900.

Roberts,
Field-Marshal, Commanding-in-chief Her Majesty's Forces in South Africa.

Proclamation.

The Proclamation No. 600, dated the 9th December, 1899, and published in the Government Gazette of the 15th December, 1899, rendering unnecessary the protesting of promissory notes, bills of exchange, and other negotiable paper, is hereby declared null and void from this date in all parts of the territory of the Orange Free State occupied by Her Majesty's forces, and henceforth Law, Chapter XCIX, O.V.S. Wetboek, relating to bills of exchange, shall be in full force and effect.

God save the Queen.

Given under my hand at Bloemfontein, this 15th day of March, 1900.

Roberts, Field-Marshal.

Proclamation.

Whereas it is deemed expedient and necessary for the welfare of the Orange Free State that postal and telegraph services shall be resumed in the aforesaid Republic, as far as circumstances permit:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal and Commanding-in-chief the British forces in South Africa, do hereby nominate and appoint

David George Anosi Falck, Administrator of the civil posts and telegraphs in such portions of the Orange Free State as have been or may hereafter be occupied by British troops. And I do hereby order that the postal and telegraph services shall be resumed in the portions of the aforesaid Republic already referred to, from the 19th day of March, 1900, under the existing Laws and Conventions of the Orange Free State, subject to such alterations as may from time to time be notified.

God save the Queen.

Given under my hand at Bloemfontein, this 17th day of March, 1900.

Roberts,
Field-Marshal, Commanding-in-chief British Forces, South Africa.

Proclamation.

Whereas it is considered necessary in the interests of the Orange Free State, and until arrangements may be made, that the provisions of the Customs Convention existing between the said State and the Colony of the Cape of Good Hope and the Colony of Natal shall be duly observed, and the laws and regulations appertaining thereto shall be enforced as soon as communication between the said Colonies and such portions of the Orange Free State as have been or may hereafter be occupied by Her Majesty's troops is restored, and the customary commercial relations are resumed; and whereas it is expedient that the necessary officers for the control and management of the Customs Department of the Orange Free State shall be appointed:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commanding-in-chief the British forces in South Africa, do hereby nominate and appoint the following officers, to wit:

Collector of Customs: Johannes Henricus Meiring.
First Clerk: Albert C. Woodward.
Second Clerk: Frederik Blignaut.
Third Clerk: Jacobus van der Wath.
Officer at Frere Bridge, Aliwal North: Aubrey McMaster.
Officer at Olifantsfontein: Johannes Henricus Beyers.
Officer at Tolpan: Johannes Augustus Stegmann.
Officer at Rietpan: Gilbert David Morgan.
Officer at Tafelkop: Cornelius Rautenbach.

God save the Queen.

Given under my hand at Bloemfontein, this 20th day of March, 1900.

Roberts,
Field-Marshal, Commanding-in-chief British Forces, South Africa.

Proclamation.

Whereas it is necessary that all State and private property in the South African Republic and the Orange Free State shall be protected from wanton destruction and damage:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar, K.P., G,C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commanding-in-chief the British forces in South Africa, do hereby give notice that all persons who, within the territories of the South African Republic or the Orange Free State, shell authorize or be guilty af the wanton destruction or damage, or the counselling, aiding, or assisting in the wanton destruction or damage of public or private property (such destruction or damage not being justified by the usages and customs of civilized warfare), will be held responsible in their persons and property for all such wanton destruction and damage.

God save the Queen.

Given under my hand at Bloemfontein, this 26th day of March, 1900.

Roberts,
Field-Marshal, Commanding-in-chief Herr Majesty's Forces in South Africa.

Proclamation.

To the inhabitants of the districts of Albert, Steynsburg, Molteno, Wodehouse, Aliwal North, Barkly East, and Colesberg.

On the recent retirement of the enemy to the north of the Orange River, the rebels who had joined them in the northern districts of the Cape Colony were treated by Her Majesty's Government with great leniency in being permitted, if not the ringleaders of disaffection, to return to their farms on the condition of surrendering their arms and of being liable to be called to account for their past conduct.

I now warn the inhabitants of the northern districts, and more particularly those who were misguided enough to join or assist the enemy, that, in the event of their committing any further act of hostility against Her Majesty, they will be treated, as regards both their persons and property, with the utmost rigour, and the extreme penalties of martial law will be enforced against them.

Army Head-quarters, Bloemfontein, April 9, 1900.

Roberts,
Field-Marshal, Commander-in-chief, South Africa.

Proclamation.

Whereas it is necessary and expedient for the etablishment and maintenance of law and order in those districts of the territory known as the Orange Free State which are, or may hereafter be, in the occupation of the forces under my command, that there should be a recognized head of the administration, with power to control and direct all matters connected with the government of the said districts:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar, K.P., G.C.B., G.C.S.I·, G.C.I.E., V.C., Field-Marshal, Commander-in-chief of the British forces in South Africa, do hereby nominate and appoint Major-General George Tindal Pretyman, C.B., as Military Governor of the said districts, with full power to do all things necessary for the due and proper administration thereof, and for the etablishment and maintenance of law, order, and good government therein.

God save the Queen.

Given under my hand at Bloemfontein, this 20th day of April 1900.

Roberts,
Field-Marshal, Commanding-in-chief Her Majesty's Forces in South Africa.

Proclamation.

In future no persons are to be allowed to ride, except officers, non-commissioned officers, and men of the Imperial army, and those connected with it.

Those transgressing this rule are to have their horses confiscated.

Given under my hand at Bloemfontein, this 30th day of April 1900.

Roberts, Field-Marshal.

Proclamation.

Annexation of Orange Free State.

Whereas certain territories in South Africa, heretofore known as the Orange Free State, have been conquered by Her Majesty's forces, and it has seemed expedient to Her Majesty that the said territories should be annexed to, and should henceforth form part of, Her Majesty's dominions, and that I should provisionally, and until Her Majesty's pleasure is more fully known, be appointed Administrator of the said territories, with power to take all such measures, and to make and enforce such laws, as I may deem necessary for the peace, order, and good government of the said territories:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar, K.P., G.C.B., G.C.S.I., G.C.I.E., VC., Field-Marshal, and Commanding-in-chief the British forces in South Africa, by Her Majesty's command, and

in virtue of the power and authority conferred upon me in that behalf by Her Majesty's Royal Commission, dated the 21st day of May 1900, and in accordance with Her Majesty's instructions thereby and otherwise signified to me, do proclaim and make known that, from and after the publication hereof, the territories known as the Orange Free State are annexed to and form part of Her Majesty's dominions, and that provisionally, and until Her Majesty's pleasure is fully declared, the said territories will be administered by me with such powers as aforesaid.

Her Majesty is pleased to direct that the new territorries shall henceforth be known as the Orange River Colony.

God save the Queen.

Given under my hand and seal at the Head-quarters of the Army in South Africa, Camp south of the Vaal River, in the said territories, this 24th day of May, in the year of our Lord 1900.

(L.S.) *Roberts,*
Field-Marshal, Commanding-in-chief Her Majesty's Forces in South Africa.

Proclamation.

Martial Law.

Whereas the territory formerly known as the Orange Free State has been annexed by Her Majesty, and is now British territory, and

I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commanding-in-chief in South Africa, have been empowered to take all measures and to make and enforce such laws as I may deem necessary for the maintenance of peace and order, and for the good government of the aforesaid territory, annexed and incorporated in Her Majesty's dominions under the designation of the Orange River Colony:

Now, therefore, I declare that the Orange River Colony is, as a temporary measure, and until further notice, placed under matial law, as such law is understood and administered in British territory and by British officers.

God save the Queen.

Given under my hand and seal at Johannesburg, this 31st day of May 1900.

(L.S.) *Roberts,*
Field-Marshal, Commanding-in-chief in South Africa.

Proclamation.

To the Inhabitants of the South African Republic.

Whereas the forces of Her Majesty the Queen under my command have entered the territory of the South African Republic, and whereas false and malicious reports are being spread abroad as to the treatment which the inhabitants may expect from Her Majesty's troops, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B,, G.C.S.I., G.C.I.E., V.C., Commander-in-chief of Her Majesty's forces in South Africa, am authorized by the Government of Her Majesty to make known, and do hereby make known, as follows:

1. Subject to the terms and provisions of this proclamation, personal safety and freedom from molestation are guaranteed to the non-combatant population.

2. All Burghers who have not taken a prominent part in the policy which has led to the war between Her Majesty and the South African Republic, or commanded any forces of the Republic, or commandeered or used violence to any British subjects, or committed any acts contrary to the usages of civilized warfare, and who are willing to lay down their arms at once, and to bind themselves by an oath to abstain from further participation in the war, will be given passes to allow them to return to their homes, and will not be made prisoners of war.

3. It is the intention of Her Majesty's Government to respect all private property of the inhabitants of the South African Republic so far as may be compatible with the operations of war, provided that the inhabitants on their part abstain from wanton damage to property.

4. If, however wanton damage is done to property, not only will the actual perpetrators of such acts, and all directly or indirectly implicated in them, be liable to the most severe punishment in person and property, but the property of all persons, whether in authority or otherwise, who have permitted or have not done their utmost to prevent such wanton damage will be liable to be confiscated or destroyed.

5. All persons are therefore exhorted in their own interest to prevent such wanton damage.

God save the Queen.

Given under my hand and seal, at Johannesburg, this 31st day of May, 1900.

(L. S.) *Roberts,*
Field-Marshal, Commander-in-chief, South Africa.

Proclamation.

V. R.

The troops of Queen Victoria are now passing through the Transvaal. Her Majesty does not make war on individuals, but is, on the contrary, anxious to spare them as far as possible the horrors of war.

The quarrel England has is with the Government, not with the people, of the Transvaal. Provided they remain neutral, no attempt will be made to interfere with persons living near the line of march; every possible protection will be given them, and any of their property that it may be necessary to take will be paid for.

But, on the other hand, those who are thus allowed to remain near the line of march must respect and maintain their neutrality; and the residents of any locality will be held responsible both in their persons and their property if any damage is done to railway or telegrah, or any violence done to any member of the British forces in the vicinity of their homes.

God save the Queen.

Mai 1900.

Redvers Buller,
General Commanding Natal Army.

Proclamation.

Inasmuch as the Orange River Colony, formerly known as the Orange Free State, is now British territory, and has been placed under martial law by my Proclamation of the 31st May, 1900:

I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, and Commanding-in-chief in South Africa, do hereby warn all inhabitants thereof who, after fourteen days from the date of this Proclamation, may be found in arms against Her Majesty within the said Colony, that they will be liable to be dealt with as rebels, and to suffer in person and property accordingly. The fourteen days' grace is given by me in order to allow time for this Proclamation to be generally known troughout the Orange River Colony. And I further direct that all Mauser and other magazine and military rifles, aud ammunition appertaining thereto, must be surrendered to the District Commissioners, or other persons appointed to receive them, within twenty-four days from the date of this Proclamation. All other fire-arms of whatever description, with the ammunition appertaining thereto, must, within the same period, be produced to District Commissioners or other persons aforesaid, to be by them registered and returned to their owners, except in cases in which it shall appear to the District Commissioners or other persons as aforesaid that, in the interests of the public safety, any such arms and ammunition should be retained in the custody of the local authorities.

And I further declare that any person who, after the expiration of the aforesaid period of twenty-four days, is found in possession of any unregistered fire-arms or ammunition shall be liable to a fine not exceeding 100*l.*, or to imprisonment not exceeding six months.

God save the Queen.

Given under my hand and seal, at Johannesburg, this 1st day of June 1900.

(L. S.) *Roberts,*
Field-Marshal, Commanding-in-chief in South Africa.

Proclamation.

V. R.

In continuation of my Proclamation to the inhabitants of the South African Republic, dated Johannesburg, the 31st May, 1900, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., VC., Commanding-in-chief Her Majesty's forces in South Africa, am authorized by the Government of Her Majesty to make known, and do hereby make known, as follows:

1. That in the event of any Burgher being granted a pass under paragraph 2 of above Proclamation he will be allowed to retain possession of his stock, or, should any or all of the said stock be required for the use of Her Majesty's troops, he will receive current market value for the same in cash.

2. That, on the receipt of the above-mentioned pass a Burgher who is desirous of herding his stock in the Wintervelt shall be given a special permit to do so during the present season.

Pretoria, 6th June, 1900.

Roberts,

Field-Marshal, Commanding-in-chief, South Africa.

Proclamation.

Whereas the Government of the South African Republic has, since the commencement of hostilities, by virtue of a certain law, to wit, Law No. 1, 1900, issued certain „Gouvernements Noten," or promissory notes, of various amounts, payment of which has been guaranteed on the security of the immovable property of the State;

And whereas Her Majesty's Government decline to recognize the validity of such promissory notes or the right of the S.A.R. Government to hypothecate the property of the State in manner hereinbefore set forth:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commander-in-chief of the British forces in South Africa, do hereby give notice that Her Majesty's Government will refuse to honour any such promissory notes that may be hereafter presented for payment, and expressly repudiate all liability in respect of them whatsoever.

God save the Queen.

Given under my hand at Johannesburg, this 6th day of June, 1900.

Roberts,

Field-Marshal, Commander-in-chief, South Africa.

Proclamation.

Whereas, in order to provide for the provisional administration of justice in Pretoria and the district of Pretoria, it is deemed necessary to constitute a Court for Administration of Justice according to martial law:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Commanding-in-chief Her Majesty's forces in South Africa, do hereby direct and order that there shall be within the district of Pretoria a Court which shall be called „The Pretoria High Court," and I do further order and direct as follows:

1. That I do hereby create, erect, and constitute the said Pretoria High Court and do ordain, direct, and appoint that the said Pretoria High Court shall have cognizance of all pleas, and jurisdiction in all causes, whether civil, criminal, or mixed, arising in Pretoria or the district of Pretoria, with jurisdiction over all persons whomsoever residing or being within Pretoria or the district of Pretoria in as full and ample a manner as I myself have in accordance with martial law.

2. I do hereby appoint C. H. Hilliard, A. E. Leary, and F. C. Garston, to be Magistrates of the said Court, of whom the said C. H. Hilliard, shall be the Chief Magistrate, and any two of whom shall form a quorum.

3. I do hereby appoint Captain T. M. McInerney, of the Victorian Rifles, to be Advocate for Her Majesty the Queen in the said Court.

4. I do order that all sentences of this Court whereby the penalty shall exceed a fine of 10*l.* or imprisonment for three months or whereby any corporal punishment is ordered, upon being passed by the said Court, shall be submitted to the Military Governor — for the time being — of Pretoria, who shall have power to suspend the said sentence, or to reduce the penalty imposed by the said sentence, or to confirm the said sentence, and no corporal punishment ordered by any sentence shall be inflicted until such sentence has been confirmed by the Military Governor.

5. The said Court shall sit at such time or times and at such place or places as the said Chief Magistrate may appoint.

6. The Chief Magistrate shall have power, subject to the approval of the Military Governor, to appoint such officers, clerks, and attendants as shall be necessary to carry out the work of the said Court.

7. The Chief Magistrate shall have power from time to time to make rules and regulations for all Court procedure, and such rules and regulations shall come into force and operation on being approved of by the Military Governor.

8. I do hereby appoint E. Blyth, Esq., provisionally to be Sheriff of the said Court, and I do order that the said Sheriff shall do all acts necessary to enforce and carry out all sentences of the said Court.

God save the Queen.

Given under my hand and seal at Pretoria, this 11th day of June 1900.

(L. S.) *Roberts*, Field-Marshal.

Proclamation.

Whereas small parties of raiders have recently been doing wanton damage to public property in the Orange River Colony and South African Republic by destroying railway bridges and culverts and cutting the telegraph wires; and whereas such damage cannot be done without the knowledge and connivance of the neighbouring inhabitants and the principal civil residents in the districts concerned:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commander-in-chief of Her Majesty's troops in Africa, warn the said inhabitants and principal civil residents that, whenever public property is destroyed or injured in the manner specified above, they will be held responsible for aiding and abetting the offenders. The houses in the vicinity of the place where the damage is done will be burnt, and the principal civil residents will be made prisoners of war.

Army Head-quarters, South Africa, 16th June, 1900.

Roberts,
Field-Marshal, Commander-in-chief, South Africa.

Proclamation.

Referring to my Proclamation, dated Pretoria, the 16th June, 1900, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commannder-in-chief of Her Majesty's troops in South Africa, do hereby declare, proclaim, and make known that, should any damage be done to any of the lines of railway or to any of the railway bridges, culverts, or buildings, or to any telegraph lines or other railway or public property in the Orange River Colony, or in that portion of the South African Republic for the time being within the sphere of military operations, the following punishment will be inflicted:

1. The principal residents of the town and districts will be held, jointly and severally, responsible for the amount of damage done in their district.

2. In addition to the payment of the damage above mentioned, a penalty depending upon the circumstances of each case, but which will in no event be less than a sum of 2*s.* 6*d.* per morgen on the area of each farm, will be levied and recovered from each Burgher of the district in which the damage is done in respect of the land owned or occupied by him in such district. Furthermore, all receipts for goods requisitioned in such district on behalf of the military authorities will be cancelled, and no payment whatsoever will be made in respect of the same.

3. As a further precautionary measure, the Director of Military Railways has been authorized to order that one or more of the residents,

who will be selected by him from each district, shall from time to time personally accompany the trains while travelling through their district.

4. The houses and farms in the vicinity of the place where the damage is done will be destroyed, and the residents in the neighbourhood dealt with under martial law.

5. The military authorities will render every facility to the principal residents to enable them to communicate the purport of this Proclamation to the other residents in their district, so that all persons may become fully cognizant of the responsibility resting upon them.

Army Head-quarters, Pretoria, 19th June, 1900.

Roberts,
Field-Marshal, Commander-in-chief, South Africa.

Proclamation.

Whereas it is necessary for the more expeditious and convenient administration of justice to civilians under martial law to amend and alter in certain respects my Proclamation No. 4 of 1900, † provisionally constituting the Pretoria High Court:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterfort, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Commander-in-chief of Her Majesty's forces in South Africa, do hereby proclaim and order that until further notice any Magistrate of the said Court sitting alone shall be competent and is authorized to carry out all, or any, of the functions of the said Court, and that no trial held or sentence passed heretofore by the said Court shall be invalid by reason solely of the same having been held or passed by one Magistrate only.

God save the Queen.

Given under my hand and seal at Pretoria, this 30th day of June 1900.

(L. S.) *Roberts*, Field-Marshal.

Proclamation.

Whereas the Government of the South African Republic has, since the commencement of hostilities, by virtue of a certain law, to wit, Law No. 1, 1900, issued, and continues to issue, certain "Gouvernements Noten", or promissory notes, of various amounts, payment of which has been guaranteed on the security of the immovable property of the State;

And whereas Her Majesty's Government decline to recognize the validity of such promissory notes, whether issued before or after the date of this Proclamation, or the right of the South African Republic Government to hypothecate the property of the State in manner hereinbefore set forth:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Com-

mander-in-chief of the British forces in South Africa, do hereby give notice that Her Majesty's Government will refuse to honour any such promissory notes that may be presented for payment, and expressly repudiates all liability in respect of them whatsoever.

God save the Queen.

Given under my hand at Pretoria, this 11th day of July 1900.

Roberts,
Field-Marshal, Commander-in-chief, South Africa.

Proclamation.

Whereas it is expedient to amend in certain respects my Proclamation, dated Pretoria, the 19th June 1900:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commanding-in-chief Her Majesty's troops in South Africa, do hereby declare, proclaim, and make known that the third section of the said Proclamation, as set forth in the Schedule hereto, is repealed.

Army Head-quarters, Pretoria, 27th July 1900.

Roberts,
Field-Marshal, Commander-in-chief, South Africa.

Schedule.

§ 3. As a further precautionary measure, the Director of Military Railways has been authorized to order that one or more of the residents, who will be selected by him from each district, shall from time to time personally accompany the trains while travelling through their district.

Proclamation.

Whereas it is necessary to make provision for the importation of goods into such portions of the territory of the South African Republic as are or may be in the occupation of Her Majesty's forces:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B,, G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commanding-in-chief Her Majesty's troops in Soute Africa, do hereby declare, proclaim, and make known as follows:

1. The importation of goods as aforesaid is permitted, subject to the following conditions:

a) That a permit for such importation has been previously obtained from a Military Governor or District Commissioner, or some officer duly authorized by him;

b) That customs duties are paid on all goods imported. These duties shall, for the present and until further provision is made therefor, be levied

according to the tariff fixed by the Government of the South African Republic, as set out in pp. 111 to 116 inclusive of the "Staats Almanak voor de Zuid-Afrikaansche Republiek, 1899."

2. In the case of goods imported from or through the Colonies of the Cape of Good Hope or Natal, the customs duties as aforesaid shall be paid to the Collectors of Customs in those Colonies, and I do hereby, subject to the consent of the Governments of the aforesaid Colonies, nominate and appoint the said Collectors of Customs to be my agents for the collection of such duties.

3. The permits mentioned in section 1, sub-section (a), shall be issued subject to such regulations as may from time to time be made by a Military Governor or District Commissioner in respect of the district administered by him.

4. Any goods imported as aforesaid without payment of the proper customs duties, or contrary to the regulations mentioned in the preceding section, shall be liable to confiscation, and the importer or his agent shall, in addition, be liable to the payment of a fine not exceeding three times the amount of the customs duties thereon.

Army Head-quarters, South Africa, Pretoria, July 27, 1900.

Roberts,
Field-Marshal, Commander-in-chief, South Africa.

Proclamation.

Whereas it is expedient that provision should be made with regard to the administration of such portions of the South African Republic as are now, or may be from time to time, occupied by the forces of Her Majesty:

Now therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I.. G.C.I.E., V.C., Field-Marshal, Commanding-in-chief Her Majesty's troops in South Africa, do hereby declare, proclaim, and make known, as follows:

1. The town and district of Pretoria, and the town of Johannesburg, together with the mining area heretofore under the jurisdiction of the Mining Commissioners of Boksburg, Johannesburg, and Krügersdorp, shall be provisionally administered by Military Governors, who shall be respectively styled the Military Governor of Pretoria and the Military Governor of Johannesburg.

2. The districts other than those mentioned in section 1, shall be provisionally administered by District Commissioners.

3. The said Military Governors and District Commissioners shall have power, subject to the instructions which they may from time receive from me, to take such measures, and to make, proclaim, and enforce such regulations as they may deem necessary for the peace, order, and good government of the districts under their jurisdiction, and all such measures

and regulations so proclaimed shall be binding on the inhabitants and residents of such towns and districts.

4. All acts heretofore done by Military Governors or other officers who may have been appointed previous to the issue of this Proclamation, for the peace, order, and good government of those portions of the South African Republic in the occupation of Her Majesty's forces, are hereby declared to be as valid and binding on the inhabitants thereof as if they had been done under the authority conferred upon Military Governors and District Commissioners by this Proclamation.

Army Head-quarters, South Africa, Pretoria, July 27, 1900.

Roberts,
Field-Marshal, Commander-in-chief, South Africa.

Proclamation.

To the inhabitants of the South African Republic:

Whereas by Proclamation No. 1 of 1900, Burghers who had not taken a prominent part in the hostilities were allowed, upon taking an oath, to return to their homes, and were not dealt with as prisoners of war; and

Whereas by Proclamation No. 2 of 1900, Burghers to whom passes and permits had been granted might retain their stock, or take them to the winter veld; and

Whereas many Burghers have taken the said oath, but have, notwithstanding this oath, taken up arms against the forces of Her Majesty the Queen; and

Whereas many Burghers, who have taken the said oath, have aided and abetted the enemy in raiding trains and destroying property belonging to the forces of Her Majesty the Queen, or have acted as spies for the enemy; and

Whereas the Government of the South African Republic considers such oath immoral, and has issued a notice warning all Burghers against taking the said oath; and

Whereas it is manifest that the leniency which has been extended to the Burghers of the South African Republic is not appreciated by them, but, on the contrary, is being used as a cloak to continue the resistance against the forces of Her Majesty the Queen; and

Whereas there are no means of distinguishing the combatant from the non-combatant portion of the population:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Commander in-chief of Her Majesty's forces in South Africa, do hereby proclaim and make known, as follows:

1. That from and after this date sections 1 and 2 of Proclamation No. 1 of 1900 are repealed, except in respect of those Burghers who have already taken the said oath.

2. That Proclamation No. 2 of 1900 is repealed.

3. That all such persons who have taken the said oath, and who have in any way broken such oath, will be punished with either death, imprisonment, or fine.

4. That all Burghers in the districts occupied by Her Majesty's forces, except such as have already taken the said oath, shall be regarded as prisoners of war, and shall be transported or otherwise dealt with as I may determine.

5. That all buildings and structures on farms on which the scouts or other forces of the enemy are harboured will be liable to be razed to the ground.

6. That the fine mentioned in Proclamation No. 6 of 1900, section 2, shall be rigorously exacted where any damage is done to the railway, and persons are hereby warned to acquaint Her Majesty's forces with the presence of the enemy upon their farms, and failing to do so they will be regarded as aiding and abetting the enemy

God save the Queen.

Given under my hand and seal, ad Pretoria, this 14th day of August 1900.

(L. S.) *Roberts*,
Field-Marshal, Commander-in-chief, South Africa.

Proclamation.

Whereas it has seemed to me expedient that certain taxes, revenues, dues, licences, royalties, ane moneys due to the Government of the South African Republic, according to the laws thereof, shall be paid to Her Majesty's forces now in occupation of certain portions of the said Republic;

And whereas it is expedient that all such taxes, revenues, dues, licences, royalties, and moneys as are payable upon mijnpachts, claims, stands, water-rights, machine-stands, and bewaarplaatsen, and upon rights similar to the said claims and stand in such portions of the said Republic as are or may be in the occupation of Her Majesty's forces, shall be paid to the officers authorized to collect or receive the same on behalf of Her Majesty's forces:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commanding-in-chief Her Majesty's troops in South Africa, hereby declare, proclaim, and make known that all persons resident in the said Republic, and the legal representatives of absentees, who are the owners of mijnpachts, claims, stands, waterights, machine-stands, and bewaarplaatsen and of rights similar to the said claims and stands in such portions of the said Republic as are or may be in the occupation of Her Majesty's forces, shall pay to the officers duly authorized to collect or receive the same, such

taxes, revenues, dues, licences, royalties, and moneys as were and are due by them to the Government of the South African Republic.

God save the Queen.

Given under my hand and seal, at Pretoria, this 20th day of August, 1900,

(L. S.) *Roberts,*
Field-Marshal, Commanding-in-chief, South Africa.

Proclamation.

To the inhabitants of the Orange River Colony.

Whereas by Proclamation a warning was issued on the 1st June, 1900, that persons in arms against Her Majesty within the Orange River Colony would be liable to be dealt with as rebels;

And whereas it was directed that all arms and ammunition should be surrendered:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.G.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commander-in-chief of Her Majesty's forces in South Africa, do hereby proclaim and make known, as follows;

1. That all persons residing in the Orange River Colony, heretefore Burghers of the Orange Free State, have, in consequence of the annexation of the territories of that State to the dominions of Her Majesty the Queen, become the subjects of Her Majesty, except those Burghers who were attached to some commando prior to the annexation, and who have continously since then been in arms against Her Majesty.

2. If any Burghers of the Orange Free State be found in arms against Her Majesty the burden of proving that they were attached to some commando prior to the annexation, and that they have continuously since then been in arms against Her Majesty, will rest upon snch Burghers.

3. Those Burghers of the Orange Free State whe were attached to some commando prior to the annexation, and who have been continuously in arms against Her Majesty, shall he regarded as prisoners of war, and be transported or otherwise dealt with as I may determine.

4. Those Burghers of the Orange Free State who have taken the so-called oath of neutrality or submission, and who have in any way broken such oath, schall be punished with either death, imprisonment, or fine.

5. All buildings and structures on farms on which the scouts or other forces of the enemy are harboured will be liable to be razed to the ground,

6. Where any damage is done to the railway, a fine of 2s. 6d. per morgen will be levied on the area of the farm or farms on which the damage was done, and the farms in the immediate neighbourhood of the damaged place may also, if I deem fit, be subjected to a similar fine.

7. All persons are hereby warned to acquaint Her Majesty's forces of the presence of the enemy upon, or in the neighbourhood of, their farms,

and if they fail so to do they will be regarded as aiding and abetting the enemy, and will be liable to be treated as rebels.

God save the Queen.

Given under my hand and seal, at the head-quarters of the army in South Africa at Belfast, this first day of September, 1900.

(L. S.) *Roberts,*
Field-Marshal, Commander-in-chief in South Africa.

Proclamation.

Annexation of South African Republic.

Whereas certain territories in South Africa, hitherto known as the South African Republic, have been conquered by Her Majesty's force, and it has seemed expedient to Her Majesty that the said territories should be annexed to, and should henceforth from part of, Her Majesty's dominions, and that I should provisionally, and until Her Majesty's pleasure is more fully known, be appointed Administrator of the said territories, with power to take all such measures, and to make and enforce such laws, as I may deem necessary for the peace, order, and the good government of the seid territories:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commanding-in-chief Her Majesty's forces in South Africa, by Her Majesty's command, and in virtue of the power and authority conferred on me in that behalf by Her Majesty's Royal Commission, dated the 4th day of July, 1900, in accordance with Her Majesty's instructions thereby and otherwise signified to me, form and after the publication hereof, do proclaim that the territories known as the South African Replublic are annexed to, and form part of, Her Majesty's dominions, and that provisionally, and until Her Majesty's pleasure is fully declared, the said territories will be administered by me with such powers as aforesaid. Her Majesty's is pleased to direct that the new territories shall henceforth be known as the Transvaal.

God save the Queen.

Given under my hand and seal, at head-quarters of the army in South Africa, in the said territories, this 1st day of September, in the year of our Lord 100.

(L. S.) *Roberts,*
Field-Marshal, Commanding-in-chief Her Majesty's Forces in South Africa.

Proclamation.

Martial Law.

Whereas the territory formerly known as the South African Republic, now the Transvaal, has been annexed by Her Majesty, and is now British territory, and I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commanding-in-chief in South Africa, have been empowered to tahe all measures to make and enforce such laws as I may deem necessary for the maintenance of peace and order and for the good government of the aforesaid territory, annexed and in corporated in Her Majesty's dominions under the designation of the Transvaal:

Now, therefore, I declare that the Transvaal is, as a temporary measure, and until further notice, placed under martial law, as such law is understood and administered in British territory and by British officers.

God save the Queen.

Given under my hand and seal, at Army head-quarters, South Africa, this 1st day of September, 1900.

(L. S.) *Roberts,*
Field-Marshal, Commanding-in-chief Her Majesty's Forces in South Africa.

Proclamation.

Resignation of Mr. S. J. P. Krüger.

The late President, Mr. Krüger, and Mr. Reitz, with the archives of the South African Republic, have crossed the Portuguese frontier, and arrived at Lourenço Marques with a view to sailing for Europe at an early date.

Mr. Krüger has formally resigned the position he held as President of the South African Republic, thus severing his official connection with the Transvaal. Mr. Krüger's action shows how hopeless in his opinion is the war which has now been carried on for nearly a year, and his desertion of the Boer cause should make it clear to his fellow Burghers that it is useles for them to continue the struggle any longer.

It is probably unknown to the inhabitants of the Transvaal and Orange River Colony that nearly 15,000 of their fellow-subjects are now prisoners of war, not one of whom will be released until those now in arms against us surrender unconditionally.

The Burghers must by this time be cognizant of the fact that no intervention on their behalf can come from any of the Great Powers, and further, that the British Empiere is determined to complete the work which has already cost her so many valuable lives, and to carry to its conclusion the war declared against her by the late Governments of the South African Republic and Orange Free State, a war to which there can be but one ending.

If any further doubts remain in the minds of the Burghers as to Her Britannic Majesty's intentions, they should be dispelled by the permanent manner in which the country is gradually being occupied by Her Majesty's forces, and by the issue of the proclamations signed by me on the 24th May and 1st September, 1900, annexing the Orange Free State and the South African Republie respectively, in the name of Her Majesty.

I take this opportunity of pointing out that, except in the small area occupied by the Boer army under the personal command of Commandant-General Botha, the war is degenerating, and has degenerated, into operations carried on in an irregular and irresponsible manner by small, and in very many cases insignificant, bodies of men.

I should be failing in my duty to Her Majesiy's Government and to Her Majesty's army in South Africa if I neglected to use every means in my power to bring such irregular warfare to an early conclusion.

The means which I am compelled to adopt are those which the customs of war prescribe as being applicable to such cases. They are ruinous to the country, and entail endless suffering on the Burghers and their families, and the longer dis guerilla warfare continues the more vigorously must they be enforced.

Pretoria, September 14, 1900.

Roberts,
Field-Marshal, Commanding-in-chief in South Africa.

Government Notice No. 111 of 1900.

As some doubt appears to exist as to the treatment of Boers who voluntarily surrender, the Field-Marshal Commanding-in-chief desires that the following instructions be made known to all concerned:

1. All Burghers now captured or surrenderring are prisoners of war, but Burghers are to be informed that if they surrender voluntarily they will not be sent out of South Africa, provided they have been guilty of no acts, other than figthing against us, which, in the opinion of the General Officer Commanding, debar them from this privilege.

2. Should Burghers thus voluntarily surrenderiug be in possession of stock which is not immediately required for the use of the troops, General Officers Commanding may use their discretion in allowing one or two members of the family or group to be given a protection pass with permission to remain in charge of the combined stock. The locality where the stock will be herded must be designated, and those left in charge are to be bound over to appear themselves and produce the stock whenever called upon to do so.

Failure to comply with these conditions will render liable to deportation those of the party who are retained as prisoners.

3. The stock of Burghers who surrender voluntarily is to be paid for, or a receipt given, stating the value, if taken for the use of the troops.

4. Camps for Burghers who voluntarily surrender are being formed in Pretoria and at Bloemfontein.

Pretoria, 22nd September 1900.

J. G. Maxwell.
Major-General, Military Governor.

Proclamation.

Appointment of Central Authority.

Inasmuch as it is advisable to have some central authority to which Military Governors of Districts, District Commissioners, and other officials can refer matters:

I hereby notify that all communications concerning the Provisional Government in the Transvaal, other than matters of a purely military nature, will, for the present, be addressed to the Military Governor, Pretoria, and will be submitted to me by that official.

Preetoria, 27th September 1900.

Roberts,
Field-Marshal, Commanding-in-chief, South Africa.

Proclamation.

Appointment of Officers.

I hereby authorize Major-General J. G. Maxwell, D.S.O., Military Governor of Pretoria, to appoint provisionally such officers as may be deemed necessary to carry out the provisions of the Statute Laws of the Transvaal, such appointments to hold good for all districts in the Transvaal.

Also to make such alterations in the Transvaal laws as are necessary to suit present circumstances.

Pretoria, 27th September 1900.

Roberts,
Field-Marshal, Commanding-in-chief in South Africa.

Government Notice No. 115 of 1900.

Uniformity of Treatment.

As it seems to me advisable to insure uniformity in the treatment of the inhabitants of the various districts of the Transvaal and Orange River Colony, the following instructions are hereby published to assist General Officers Commanding in carrying out the conditions of recent Proclamations issued by me:

1. By Military Secretary's telegram, No. C, 4825, dated the 20th September, General Officers Commanding have been empowered to promise that Burghers who surrender voluntarily will not be sent out of South

Africa, provided they have been guilty of no acts, other than fighting against us, which should debar them from this privilege. This concession does not apply to those who have taken prominent military or political part in the war, nor to those who have broken their oath of neutrality, nor to foreigners. In the event of a military or political leader inquiring as to terms of surrender, the question is to be referred direct to Army head-quarters.

2. All stock, supplies, &c., of those on commando, or of those who have broken their oath, are to be taken and no receipt given.

3. In cases where some members of a family, who all live on one farm, have broken their oath and gone on commando, those remaining are to be warned that, unless the former surrender within a reasonable period, all stocks, supplies, &c., will be taken and no receipt given.

4. In cases of sniping, leaders of bands are to be informed that, unless it ceases, their (the leaders') houses will be burned. A few days should be allowed for this to become known, notices being sent to the resorts of the leaders and to their wives. In the event of its being necessary to burn the farms, further notice should be issued stating why this has been done, and giving a list of other houses that will next be burned.

5. All stocks, supplies, &c., of snipers are to be taken and no receipt given.

6. Protection is to be given to all inhabitants who have kept the oath of neutrality, remaining quietly at home and taking no further part in the war. Any stock or supplies taken from them are to be paid for or receipts given in full for them.

7. Wives and families of men who are prisoners of war are to be protected, and receipts in full given for anything taken.

When a man surrenders a protection pass is to be given to his wife.

8. Widows of men killed in the war and all lone women are to receive protection passes, and to be paid or given receipts for everything taken.

9. Burghers are to be informed that as soon as their leaders submit, and when every cannon has been surrendered, peace will be declared, and all prisoners of war will then be sent back to their homes. Exceptions only will be made in the cases of Members of the late Governments of the South African Republic and Orange Free State, who are responsible for the war and its present disastrous prolongation, and of those who may be proved to have been guilty of acts contrary to the customs of war.

Army Head-quarters, South Africa, 28th September 1900.

Roberts,

Field-Marshal, Commanding-in-chief in South Africa.

Proclamation.

Administration of Justice (Johannesburg).

Whereas it is expedient to define more accurately the jurisdiction of the Courts constituted by Proclamation No. 1 of the 4th June 1900, and No. 4, as amended by Proclamation No. 5, both of the 7th June 1900:

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshall, Commanding-in-chief Her Majesty's troops in South Africa, do hereby proclaim, declare, and make known as follows:

1. All the Courts created by the said Proclamations shall have cognizance of and jurisdiction in all causes out of offences, whether the same be

a) Offences under the Common or Statute Law of the Transvaal;

b) Contraventions of the terms of any Proclamation or Notice which has appeared, or may at any time hereafter appear in an Official Gazette.

2. The military Tribunal may have cognizance of and jurisdiction in all causes arising out of

a) Any breach of any of the conditions of an oath of neutrality or submission;

b) Any concealment of arms or ammunition;

c) Any contravention of notices requiring the surrender of arms and ammunition;

3. The Military Tribunal may further have cognizance of, and jurisdiction in, all such causes as shall arise out of any military offences committed within the district by civilians resident within the said district.

God save the Queen.

Given under my hand and seal, at Pretoria, this 1st day of October 1900.

(L. S.) *Roberts,*
Field-Marshal, Commanding-in-chief, South Africa.

27.

ALLEMAGNE, BELGIQUE, DANEMARK, ESPAGNE, FRANCE, GRANDE-BRETAGNE, ITALIE, PAYS-BAS, PORTUGAL, RUSSIE, SUÈDE ET NORVÈGE, SUISSE.

Convention destinée à assurer aux femmes majeures, abusées ou contraintes, comme aux femmes et filles mineures, une protection efficace contre le trafic criminel connu sous le nom de „Traite des Blanches"; signée à Paris, le 18 mai 1904.*)

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, au nom de l'Empire Allemand; Sa Majesté le Roi des Belges; Sa Majesté le Roi de Danemark; Sa Majesté le Roi d'Espagne; le Président de la République Française; Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Possessions Britanniques au delà des mers, Empereur des Indes; Sa Majesté le Roi d'Italie; Sa Majesté la Reine des Pays-Bas; Sa Majesté le Roi du Portugal et des Algarves; Sa Majesté l'Empereur de toutes les Russies; Sa Majesté le Roi de Suède et de Norvège, et le Conseil Fédéral Suisse, désireux d'assurer aux femmes majeures, abusées ou contraintes, comme aux femmes et filles mineures, une protection efficace contre le trafic criminel connu sous le nom de „Traite des Blanches", ont résolu de conclure un Arrangement à l'effet de concerter des mesures propres à atteindre ce but, et ont nommé pour leurs Plénipotentiaires, savoir:

Seine Majestät der Deutsche Kaiser, König von Preussen, im Namen des Deutschen Reichs, Seine Majestät der König der Belgier, Seine Majestät der König von Dänemark, Seine Majestät der König von Spanien, der Präsident der Französischen Republik, Seine Majestät der König des Vereinigten Königreichs von Grossbritannien und Irland und der überseeischen britischen Besitzungen, Kaiser von Indien, Seine Majestät der König von Italien, Ihre Majestät die Königin der Niederlande, Seine Majestät der König von Portugal und Algarvien, Seine Majestät der Kaiser aller Reussen, Seine Majestät der König von Schweden und Norwegen und der Schweizerische Bundesrat, von dem Wunsche geleitet, gegen das unter dem Namen „Mädchenhandel" bekannte verbrecherische Geschäftstreiben volljährigen Frauenspersonen, die getäuscht oder genötigt wurden, sowie minderjährigen Frauen und Mädchen wirksamen Schutz zu gewähren, haben beschlossen, ein Abkommen zu treffen, um zur Erreichung dieses Zweckes geeignete Massregeln zu vereinbaren, und haben zu Ihren Bevollmächtigten ernannt:

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*) Le dépôt des ratifications a eu lieu à Paris, le 18 janvier 1905.

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse:

S. A. S. le Prince de Radolin, Son Ambassadeur Extraordinaire et Plénipotentiaire près le Président de la République Française;

Sa Majesté le Roi des Belges:

M. A. Leghait, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près le Président de la République Française;

Sa Majesté le Roi de Danemark:

M. le Comte F. Reventlow, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près le Président de la République Française;

Sa Majesté le Roi d'Espagne:

S. Exc. M. F. de Leon y Castillo, Marquis del Muni, Son Ambassadeur Extraordinaire et Plénipotentiaire près le Président de la République Française;

Le Président de la République Française:

S. Exc. M. Th. Delcassé, Député, Ministre des Affaires Étrangères de la République Française;

Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Possessions

Seine Majestät der Deutsche Kaiser, König von Preussen:

Seine Durchlaucht den Fürsten von Radolin, Allerhöchstihren ausserordentlichen und bevollmächtigten Botschafter bei dem Präsidenten der Französischen Republik,

Seine Majestät der König der Belgier:

Herrn A. Leghait, Allerhöchstihren ausserordentlichen Gesandten und bevollmächtigten Minister bei dem Präsidenten der Französischen Republik,

Seine Majestät der König von Dänemark:

Herrn Grafen F. Reventlow, Allerhöchstihren ausserordentlichen Gesandten und bevollmächtigten Minister bei dem Präsidenten der Französischen Republik,

Seine Majestät der König von Spanien:

Seine Exzellenz Herrn F. de Leon y Castillo, Marquis del Muni, Allerhöchstihren ausserordentlichen und bevollmächtigten Botschafter bei dem Präsidenten der Französischen Republik,

Der Präsident der Französischen Republik:

Seine Exzellenz Herrn Th. Delcassé, Abgeordneten, Minister der auswärtigen Angelegenheiten der Französischen Republik,

Seine Majestät der König des Vereinigten Königreichs von Grossbritannien und Irland

Britanniques au delà des mers, Empereur des Indes:

S. Exc. Sir Edmund Monson, Son Ambassadeur Extraordinaire et Plénipotentiaire près le Président de la République Française;

Sa Majesté le Roi d'Italie:

S. Exc. M. le Comte Tornielli Brusati di Vergano, Son Ambassadeur Extraordinaire et Plénipotentiaire près le Président de la République Française;

Sa Majesté la Reine des Pays-Bas:

M. le Chevalier de Stuers, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près le Président de la République Française;

Sa Majesté le Roi de Portugal et des Algarves:

M. T. de Souza-Roza, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près le Président de la République Française:

Sa Majesté l'Empereur de toutes les Russies:

S. Exc. M. de Nelidow, Son Ambassadeur Extraordinaire et Plénipotentiaire près le Président de la République Française;

Sa Majesté le Roi de Suède et de Norvège:

und der überseeischen britischen Besitzungen, Kaiser von Indien:

Seine Exzellenz Sir Edmund Monson, Allerhöchstihren ausserordentlichen und bevollmächtigten Botschafter bei dem Präsidenten der Französischen Republik,

Seine Majestät der König von Italien:

Seine Exzellenz Herrn Grafen Tornielli Brusati di Vergano, Allerhöchstihren ausserordentlichen und bevollmächtigten Botschafter bei dem Präsidenten der Französischen Republik,

Ihre Majestät die Königin der Niederlande:

Herrn Ritter de Stuers, Allerhöchstihren ausserordentlichen Gesandten und bevollmächtigten Minister bei dem Präsidenten der Französischen Republik,

Seine Majestät der König von Portugal und Algarvien:

Herrn T. de Souza Roza, Allerhöchstihren ausserordentlichen Gesandten und bevollmächtigten Minister bei dem Präsidenten der Französischen Republik,

Seine Majestät der Kaiser aller Reussen:

Seine Exzellenz Herrn von Nelidow, Allerhöchstihren ausserordentlichen und bevollmächtigten Botschafter bei dem Präsidenten der Französischen Republik,

Seine Majestät der König von Schweden und Norwegen:

Pour la Suède et pour la Norvège:

M. Åkerman, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près le Président de la République Française;

Et le Conseil Fédéral Suisse:

M. Charles Édouard Lardy, Envoyé Extraordinaire et Ministre Plénipotentiaire de la Confédération Suisse près le Président de la République Française;

Lesquels, ayant échangé leurs pleins pouvoirs trouvés en bonne et due forme, sont convenus des dispositions suivantes:

Article premier.

Chacun des Gouvernements contractants s'engage à établir ou à désigner une Autorité chargée de centraliser tous les renseignements sur l'embauchage des femmes et filles en vue de la débauche à l'étranger; cette Autorité aura la faculté de correspondre directement avec le Service similaire établi dans chacun des autres États contractants.

Article 2.

Chacun des Gouvernements s'engage à faire exercer une surveillance en vue de rechercher, particulièrement dans les gares, les ports d'embarquement et en cours de voyage, les conducteurs de femmes et filles destinées à la débauche. Des instructions seront adressées dans ce but aux fonctionnaires ou à toutes autres personnes ayant qualité à cet effet, pour procurer, dans les limites légales,

für Schweden und für Norwegen:

Herrn Åkerman, Allerhöchstihren ausserordentlichen Gesandten und bevollmächtigten Minister bei dem Präsidenten der Französischen Republik,

und der Schweizerische Bundesrat:

Herrn Karl-Eduard Lardy, ausserordentlichen Gesandten und bevollmächtigten Minister der Schweizerischen Eidgenossenschaft bei dem Präsidenten der Französischen Republik,

die nach gegenseitiger Mitteilung ihrer in guter und gehöriger Form befundenen Vollmachten über nachstehende Bestimmungen übereingekommen sind:

Artikel 1.

Jede der vertragschliessenden Regierungen verpflichtet sich, eine Behörde zu errichten oder zu bestellen, der es obliegt, alle Nachrichten über Anwerbung von Frauen und Mädchen zu Zwecken der Unzucht im Ausland an einer Stelle zu sammeln; diese Behörde soll das Recht haben, mit der in jedem der anderen vertragschliessenden Staaten errichteten gleichartigen Verwaltung unmittelbar zu verkehren.

Artikel 2.

Jede der Regierungen verpflichtet sich, Überwachung ausüben zu lassen, um, insbesondere auf den Bahnhöfen, in den Einschiffungshäfen und während der Fahrt, die Begleitung von Frauen und Mädchen, welche der Unzucht zugeführt werden sollen, ausfindig zu machen. Zu diesem Zwecke sollen an die Beamten oder an alle sonst dazu berufenen Personen Weisungen erlassen werden, um innerhalb der

tous renseignements de nature à mettre sur la trace d'un trafic criminel.

L'arrivée de personnes paraissant évidemment être les auteurs, les complices ou les victimes d'un tel trafic sera signalée, le cas échéant, soit aux Autorités du lieu de destination, soit aux Agents Diplomatiques ou Consulaires intéressés, soit à toutes autres Autorités compétentes.

Article 3.

Les Gouvernements s'engagent à faire recevoir, le cas échéant et dans les limites légales, les déclarations des femmes ou filles de nationalité étrangère qui se livrent à la prostitution, en vue d'établir leur identité et leur état civil, et de rechercher qui les a déterminées à quitter leur pays. Les renseignements recueillis seront communiqués aux Autorités du pays d'origine desdites femmes ou filles, en vue de leur rapatriement éventuel.

Les Gouvernements s'engagent, dans les limites légales et autant que faire se peut, à confier, à titre provisoire et en vue d'un rapatriement éventuel, les victimes d'un trafic criminel, lorsqu'elles sont dépourvues des ressources, à des institutions d'assistance publique ou privée ou à des particuliers offrant les garanties nécessaires.

Les Gouvernements s'engagent aussi, dans les limites légales et autant que possible, à renvoyer dans leurs pays d'origine celles de ces femmes ou filles qui demandent leur rapatriement ou qui seraient réclamées par les personnes ayant autorité sur elles. Le rapatriement ne sera effectué

gesetzlichen Grenzen alle Nachrichten zu beschaffen, die geeignet sind, auf die Spur eines verbrecherischen Geschäftstreibens zu führen.

Die Ankunft von Personen, welche offenbar Veranstalter, Gehilfen oder Opfer eines solchen Geschäftstreibens zu sein scheinen, soll gegebenen Falles den Behörden des Bestimmungsortes, den beteiligten diplomatischen oder konsularischen Agenten oder jeder sonst zuständigen Behörde gemeldet werden.

Artikel 3.

Die Regierungen verpflichten sich, gegebenen Falles innerhalb der gesetzlichen Grenzen die Aussagen der Frauen und Mädchen fremder Staatsangehörigkeit, die sich der Unzucht hingeben, aufnehmen zu lassen, um ihre Identität und ihren Personenstand festzustellen und zu ermitteln, wer sie zum Verlassen ihrer Heimat bestimmt hat. Die eingezogenen Nachrichten sollen den Behörden des Heimatlandes der besagten Frauen und Mädchen behufs ihrer etwaigen Heimschaffung mitgeteilt werden.

Die Regierungen verpflichten sich, innerhalb der gesetzlichen Grenzen und soweit es geschehen kann, die Opfer eines verbrecherischen Geschäftstreibens, wenn sie von Mitteln entblösst sind, öffentlichen oder privaten Unterstützungsanstalten oder Privatpersonen, welche die erforderlichen Sicherheiten bieten, im Hinblick auf etwaige Heimschaffung vorläufig anzuvertrauen.

Die Regierungen verpflichten sich auch, innerhalb der gesetzlichen Grenzen nach Möglichkeit diejenigen unter diesen Frauen und Mädchen nach ihrem Heimatlande zurückzusenden, welche ihre Heimschaffung nachsuchen oder welche von Personen, unter deren Gewalt sie stehen, be-

qu'après entente sur l'identité et la nationalité, ainsi que sur le lieu et la date de l'arrivée aux frontières. Chacun des Pays contractants facilitera le transit sur son territoire.

ansprucht werden sollten. Die Heimschaffung soll erst ausgeführt werden nach Verständigung über die Identität und die Staatsangehörigkeit sowie über den Ort und den Zeitpunkt der Ankunft an den Grenzen. Jedes der vertragschliessenden Länder soll den Durchgang durch sein Gebiet erleichtern.

La correspondance relative aux rapatriements se fera, autant que possible, par la voie directe.

Der Schriftwechsel über die Heimschaffungen soll soviel als möglich auf unmittelbarem Wege erfolgen.

Article 4.

Au cas où la femme ou fille à rapatrier ne pourrait rembourser elle-même les frais de son transfert et où elle n'aurait ni mari, ni parents, ni tuteur qui payeraient pour elle, les frais occasionnés par le rapatriement seront à la charge du pays sur le territoire duquel elle réside, jusqu'à la prochaine frontière ou port d'embarquement dans la direction du pays d'origine, — et à la charge du pays d'origine pour le surplus.

Artikel 4.

Falls die heimzuschaffende Frauensperson (Frau oder Mädchen) die Kosten ihrer Beförderung nicht selbst zurückerstatten kann und weder Ehemann, Eltern, noch Vormund hat, die für sie zahlen würden, so sollen die Kosten der Heimschaffung dem Lande, auf dessen Gebiete sie sich aufhält, bis zu der Grenze oder dem Einschiffungshafen, die in der Richtung nach dem Heimatlande die nächsten sind, zur Last fallen und im übrigen das Heimatland belasten.

Article 5.

Il n'est pas dérogé, par les dispositions des articles 3 et 4 ci-dessus, aux Conventions particulières qui pourraient exister entre les Gouvernements contractants.

Artikel 5.

Durch die Bestimmungen der obigen Artikel 3 und 4 werden besondere Vereinbarungen nicht berührt, die etwa zwischen den vertragschliessenden Regierungen bestehen möchten.

Article 6.

Les Gouvernements contractants s'engagent, dans les limites légales, à exercer, autant que possible, une surveillance sur les bureaux ou agences qui s'occupent du placement de femmes ou filles à l'étranger.

Artikel 6.

Die vertragschliessenden Regierungen verpflichten sich, innerhalb der gesetzlichen Grenzen nach Möglichkeit eine Überwachung der Bureaus und Agenturen auszuüben, die sich damit befassen, Frauen und Mädchen Stellen im Auslande zu vermitteln.

Article 7.

Les Etats non signataires sont admis à adhérer au présent Arrangement. A cet effet, ils notifieront leur intention, par la voie diplomatique,

Artikel 7.

Den Staaten, die das gegenwärtige Abkommen nicht unterzeichnet haben, soll der Beitritt freistehen. Zu diesem Zwecke haben sie ihre Absicht auf

au Gouvernement Français qui en donnera connaissance à tous les Etats contractants.

Article 8.

Le présent Arrangement entrera en vigueur six mois après la date de l'échange des ratifications. Dans le cas où l'une des Parties contractantes le denoncerait, cette dénonciation n'aurait d'effet qu'à l'égard de cette Partie, et cela douze mois seulement à dater du jour de ladite dénonciation.

Article 9.

Le présent Arrangement sera ratifié et les ratifications seront échangées à Paris, dans le plus bref délai possible.

En foi de quoi, les Plénipotentiaires respectifs ont signé le présent Arrangement et y ont apposé leurs cachets.

Fait à Paris, le 18 mai 1904, en un seul exemplaire qui restera déposé dans les Archives du Ministère des Affaires Étrangères de la République Française, et dont une copie, certifiée conforme, sera remise à chaque Puissance contractante.

(L. S.) *Radolin.*
(L. S.) *A. Leghait.*
(L. S.) *F. Reventlow.*
(L. S.) *F. de Leon y Castillo.*
(L. S.) *Delcassé.*
(L. S.) *Edmund Monson.*
(L. S.) *G. Tornielli.*
(L. S.) *A. de Stuers.*
(L. S.) *T. de Souza Roza.*
(L. S.) *Nelidow.*

Pour la Suède et pour la Norvège:

(L. S.) *Åkerman.*
(L. S.) *Lardy.*

diplomatischem Wege der Französischen Regierung anzuzeigen, die hiervon allen vertragschliessenden Staaten Kenntnis geben wird.

Artikel 8.

Das gegenwärtige Abkommen soll sechs Monate nach dem Tage des Austausches der Ratificationsurkunden in Kraft treten. Falls einer der vertragschliessenden Teile es kündigen sollte, würde die Kündigung nur in Ansehung dieses Teiles wirksam werden und zwar erst zwölf Monate nach dem Tage der besagten Kündigung.

Artikel 9.

Das gegenwärtige Abkommen soll ratifiziert und die Ratifikationsurkunden sollen in möglichst kurzer Frist in Paris ausgetauscht werden.

Zu Urkund dessen haben die Bevollmächtigten das gegenwärtige Abkommen unterzeichnet und mit ihren Siegeln versehen.

Geschehen zu Paris am 18. Mai 1904 in einer einzigen Ausfertigung, die im Archive des Ministeriums der auswärtigen Angelegenheiten der Französischen Republik hinterlegt bleiben soll und wovon eine beglaubigte Abschrift einer jeden vertragschliessenden Macht übergeben werden soll.

(L. S.) *Radolin.*
(L. S.) *A. Leghait.*
(L. S.) *F. Reventlow.*
(L. S.) *F. de Leon y Castillo.*
(L. S.) *Delcassé.*
(L. S.) *Edmund Monson.*
(L. S.) *G. Tornielli.*
(L. S.) *A. de Stuers.*
(L. S.) *T. de Souza Roza.*
(L. S.) *Nelidow.*

Für Schweden und für Norwegen:

(L. S.) *Åkerman.*
(L. S.) *Lardy.*

Procès-Verbal de Signature.

Les Plénipotentiaires soussignés, réunis ce jour à l'effet de procéder à la signature de l'Arrangement ayant pour but d'assurer une protection efficace contre la „Traite des Blanches", ont échangé la déclaration suivante en ce qui concerne l'application dudit Arrangement aux Colonies respectives des Etats contractants.

Article premier.

Les Pays signataires de l'Arrangement susmentionné ont le droit d'y accéder en tout temps pour leurs Colonies ou Possessions étrangères.

Ils peuvent, à cet effet, soit faire une déclaration générale par laquelle toutes leurs Colonies ou Possessions sont comprises dans l'accession, soit nommer expressément celles qui y sont comprises, soit se borner à indiquer celles qui en sont exclues.

Article 2.

Le Gouvernement Allemand déclare réserver ses résolutions au sujet de ses Colonies.

Le Gouvernement Danois déclare qu'il se réserve le droit d'adhérer à l'Arrangement pour les Colonies Danoises.

Le Gouvernement Espagnol déclare réserver ses résolutions au sujet de ses Colonies.

Le Gouvernement Français déclare que l'Arrangement s'appliquera à toutes les Colonies Françaises.

Le Gouvernement de Sa Majesté Britannique déclare se réserver le

Unterzeichnungsprotokoll.

Die unterzeichneten Bevollmächtigten, die heute zusammengetreten sind, um zur Unterzeichnung des Abkommens zur Gewährung wirksamen Schutzes gegen den „Mädchenhandel" zu schreiten, haben hinsichtllich der Anwendbarkeit jenes Abkommens auf die Kolonien der vertragschliessenden Staaten folgende Erklärung ausgetauscht.

Artikel 1.

Die Länder, die das oben erwähnte Abkommen unterzeichnet haben, haben das Recht, ihm jederzeit für ihre Kolonien oder auswärtigen Besitzungen beizutreten.

Zu diesem Zwecke können sie entweder eine allgemeine Erklärung abgeben, wodurch alle ihre Kolonien oder Besitzungen in den Beitritt eingeschlossen werden, oder diejenigen, die darin eingeschlossen werden, ausdrücklich benennen oder sich auf die Angabe derjenigen beschränken, die davon ausgenommen werden.

Artikel 2.

Die Deutsche Regierung erklärt, sich ihre Entschliessungen wegen ihrer Schutzgebiete vorzubehalten.

Die Dänische Regierung erklärt, dass sie sich das Recht vorbehält, dem Abkommen für die dänischen Kolonien beizutreten.

Die Spanische Regierung erklärt, sich ihre Entschliessungen wegen ihrer Kolonien vorzubehalten.

Die Französiche Regierung erklärt, dass das Abkommen auf alle französischen Kolonien Anwendung finden soll.

Die Regierung Seiner Britischen Majestät srklärt, sich das Recht vor-

droit d'adhérer à l'Arrangement et de le dénoncer pour chacune des Colonies ou Possessions Britanniques, séparément.

Le Gouvernement Italien déclare que l'Arrangement s'appliquera à la Colonie de l'Erythrée.

Le Gouvernement des Pays-Bas déclare que l'Arrangement s'appliquera à toutes les Colonies Néerlandaises.

Le Gouvernement Portugais déclare se réserver de décider ultérieurement si l'Arrangement sera mis en vigueur dans quelqu'une des Colonies Portugaises.

Le Gouvernement Russe déclare que l'Arrangement sera applicable intégralement à tout le territoire de l'Empire en Europe et en Asie.

Article 3.

Les Gouvernements qui auraient ensuite à faire des déclarations au sujet de leurs Colonies les feront dans la forme prévue à l'article 7 de l'Arrangement.

Au moment de procéder à la signature de l'Arrangement, S. A. S. le Prince de Radolin, Ambassadeur d'Allemagne, demande, au nom de son Gouvernement, à faire la déclaration suivante:

De l'avis du Gouvernement Allemand, les règlements qui pourraient exister entre l'Empire Allemand et le pays d'origine, concernant l'assistance mutuelle d'indigents, ne sont pas applicables aux personnes qui seront rapatriées, en vertu du présent Arrangement, en passant par l'Allemagne.

zubehalten, für jede der britischen Kolonien oder Besitzungen besonders dem Abkommen beizutreten und es zu kündigen.

Die Italienische Regierung erklärt, dass das Abkommen auf die erythräische Kolonie Anwendung finden soll.

Die Regierung der Niederlande erklärt, dass das Abkommen auf alle niederländischen Kolonien Anwendung finden soll.

Die Portugiesische Regierung erklärt, sich für später die Entscheidung darüber vorzubehalten, ob das Abkommen in einer der portugiesischen Kolonien in Kraft gesetzt werden soll.

Die Russische Regierung erklärt, dass das Abkommen auf das ganze Gebiet des Reichs in Europa und in Asien unbeschränkt Anwendung finden soll.

Artikel 3.

Die Regierungen, die weiterhin Erklärungen hinsichtlich ihrer Kolonien abzugeben haben, sollen sie in der im Artikel 7 des Abkommens vorgesehenen Form abgeben.

Im Begriffe zur Unterzeichnung des Abkommens zu schreiten, wünscht Seine Durchlaucht der Fürst von Radolin, Deutscher Botschafter, im Namen seiner Regierung folgende Erklärung abzugeben:

Nach Auffassung der Deutschen Regierung finden auf Personen, die in Gemässheit des gegenwärtigen Abkommens auf dem Wege über Deutschland heimgeschafft werden sollen, die zwischen dem Deutschen Reiche und dem Heimatstaate wegen wechselseitiger Unterstützung von Hilfsbedürftigen etwa bestehenden Abmachungen keine Anwendung.

En foi de quoi, les Plénipotentiaires ont signé le présent Procès-Verbal.

Fait à Paris, le 18 mai 1904.

Radolin.
A. Leghait.
F. Reventlow.
F. de Leon y Castillo.
Delcassé.
Edmund Monson.
G. Tornielli.
A. de Stuers.
T. de Souza Roza.
Nelidow.

Pour la Suède et pour la Norvège:
Åkerman.
Lardy.

Zu Urkund dessen haben die Bevollmächtigten das gegenwärtige Protokoll unterzeichnet.

Geschehen zu Paris am 18. Mai 1904.

Radolin.
A. Leghait.
F. Reventlow.
F. de Leon y Castillo.
Delcassé.
Edmund Monson.
G. Tornielli.
A. de Stuers.
T. de Sonza Roza.
Nelidow.

Für Schweden und für Norwegen.
Åkerman.
Lardy.

28.

GRANDE-BRETAGNE, FRANCE, GRÈCE, RUSSIE, TURQUIE.

Convention concernant un emprunt destiné à pourvoir aux indemnités dues par la Grèce à l'Empire Ottoman en vertu des Art. II et VIII du Traité de Paix conclu à Constantinople, le $\frac{22 \text{ novembre}}{4 \text{ décembre}}$ 1897;*) signée à Paris, le 29 mars 1898.**)

En vue de faciliter au Gouvernement Hellénique la conclusion d'un emprunt destiné, pour partie, à pourvoir aux indemnités dues par la Grèce à l'Empire Ottoman en vertu des Articles II et VIII du Traité de Paix conclu à Constantinople le $\frac{22 \text{ novembre}}{4 \text{ décembre}}$, 1897, et pour le surplus à pourvoir aux besoins énumérés dans l'Article 10 de la Loi sur le Contrôle, les Gouvernements de Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, de la République Française, de Sa Majesté le Roi des Hellènes, et de Sa Majesté l'Empereur de Toutes les Russies, ont arrêté d'un commun accord les dispositions suivantes:

*) V. **N. R. G.** 2e s. XXVIII. 630.
**) Les ratifications ont été échangées à Paris, le 18 mai 1898.

I. Émission de l'Emprunt.

Art. I. Le Gouvernement Hellénique pourra créer, sous la garantie résultant de la présente Convention, à un taux réel d'intérêt qui n'excédera pas $2^3/_4$ pour cent et pour une durée qui ne sera pas supérieure à soixante ans, la quantité de titres nécessaire pour produire une somme effective maxima de 170,000,000 fr. 6,800,000 l., ou 63,750,000 roubles, qui recevra les emplois prévus par lea Articles 7 et 10 de la Loi sur le Contrôle.

Les conditions de cet emprunt seront arrêtées d'un commun accord par les trois Puissances Garantes et par le Gouvernement Hellénique. Elles feront l'objet d'un Règlement qui sera sanctionné par Décret Royal, rendu en Conseil des Ministres, en vertu d'une autorisation législative spéciale.

II. Sur le capital fixé par l'Article I il sera émis immédiatement la quantité de titres nécessaire pour produire une somme effective de 150,000,000 fr., 6,000,000 l., ou 56,250,000 roubles.

Les obligations destinées éventuellement à couvrir les déficits des années 1898 et suivantes, dans la limite d'un maximum de 20,000,000 fr., seront émises au fur et à mesure des besoins, en vertu d'autorisations législatives spéciales préalablement soumises à l'approbation de la Commission Internationale, conformément à l'Article 10 de la Loi sur le Contrôle.

La faculté d'émettre ces obligations ne s'étendra pas au delà de l'année 1903.

III. Les frais d'émission, de négociation, et de remise seront ajoutés au capital des emprunts visés dans l'Article précédent.

II. Service de l'Emprunt.

IV. Le service de l'emprunt sera assuré au moyen d'une annuité fixe calculée, amortissement compris, à 3 · 60 pour cent du capital nominal et fournie par les revenus affectés au service de la Dette Publique Hellénique, d'après les dispositions de la Loi sur le Contrôle. Toutefois, l'amortissement ne commencera qu'à partir de l'année 1903, et pendant les cinq premières années l'annuité à la charge du Gouvernement Hellénique sera de 2 · 50 pour cent du capital nominal des emprunts émis.

V. Les coupons seront payés en or, le 1er avril et le 1er octobre de chaque année, sur les places qui seront désignées ultérieurement.

VI. La portion de l'annuité fixée par l'Article IV qui ne sera pas absorbée par le service de l'intérêt sera affectée à l'amortissement de l'emprunt. L'amortissement s'effectuera au pair par voie de tirage. Toutefois, si le cours était inférieur au pair, il pourrait s'effectuer au moyen de rachats sur le marché.

III. Emploi du Produit de l'Emprunt.

VII. Le produit de l'emprunt sera employé par la Commission Internationale dans les conditions prévues par les Articles 7 et 10 de la Loi sur le Contrôle.

VIII. Les conditions de la conversion ou du remboursement de la dette flottante en or feront l'objet d'un Décret Royal préalablement soumis à l'approbation de la Commission Internationale.

Les obligations destinées à couvrir les banques d'émission des sommes en or qui leur ont été empruntées en vertu des lois sur le cours forcé, ainsi que de leurs autres avances en or, resteront déposées à la Banque de France, qui ne pourra s'en dessaisir que sur l'avis conforme de la Commission Internationale.

Les coupons de ces obligations seront détachés et remis aux banques d'émission.

IV. Garantie de l'Emprunt.

IX. Les Gouvernements Britannique, Français, et Russe s'engagent, soit à garantir conjointement et solidairement, soit à demander à leurs Parlements l'autorisation de garantir conjointement et solidairement, le service régulier de l'annuité fixé par l'Article IV.

X. Une Convention ultérieure déterminera les conditions dans lesquelles s'effectueraient les avances, si la garantie devenait effective, ainsi que le mode de remboursement qui leur serait applicable.

XI. Le Gouvernement Hellénique aura le droit, avec l'assentiment des Puissances Garantes, d'opérer la conversion de l'emprunt à toute époque, à partir du 1er avril 1918.

Il sera tenu d'exercer cette faculté sur la demande collective des trois Puissances Garantes, qui s'entendront sur les conditions dans lesquelles cette demande devra lui être adressée.

V. Dispositions Générales.

XII. Le capital et les intérêts des obligations émises conformément aux Articles I et II de la présente Convention seront exempts de tous impôts, droits, ou charges au profit du Gouvernement Hellénique.

XIII. La présente Convention sera ratifiée, et les ratifications en seront échangées à Paris le plus tôt possible.

En foi de quoi les Plénipotentiaires respectifs l'ont signée et y ont apposé leurs cachets.

Fait à Paris, en quatre exemplaires, le 29 mars, 1898.

(L. S.) *Edmund Monson,*
Ambassadeur de Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes.

(L. S.) *G. Hanotaux,*
Ministre des Affaires Etrangères de la République Française.

(L. S.) *N. Delyannni,*
Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté le Roi des Hellènes.

(L. S.) *L. Ouroussoff,*
Ambassadeur de Sa Majesté l'Empereur de Toutes les Russies.

Procès-verbal de Dépôt des Ratifications. Signé à Paris, le 18 mai 1898.

Les Soussignés s'étant réunis pour procéder au dépôt des ratifications de Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, de M. le Président de la République Française, de Sa Majesté le Roi des Hellènes, et de Sa Majesté l'Empereur de Toutes les Russies, sur la Convention signée à Paris le 29 mars 1898, en vue de faciliter au Gouvernement Hellénique la conclusion d'un emprunt, les instruments de ces ratifications ont été produits, et trouvés en bonne et due forme; ils ont été remis entre les mains de son Excellence M. le Ministre des Affaires Etrangères de la République Française pour être déposés aux archives de ce Ministère, ce dépôt devant tenir lieu d'échange.

En foi de quoi les Soussignés ont dressé le présent procès-verbal, qu'ils ont revêtu de leurs cachets.

(L. S.) *Edmund Monson.*
(L. S.) *G. Hanotaux.*
(L. S.) *N. P. Delyanni.*
(L. S.) *L. Ouroussoff.*

29.

SUISSE.

Loi fédérale concernant la surveillance de l'introduction et de l'emploi des pigeons voyageurs; du 24 juin 1904.

Eidgenössische Gesetzsammlung. Octobre 1904.

Bundesgesetz betreffend die Überwachung der Einführung und der Verwendung von Brieftauben.

Die Bundesversammlung der schweizerischen Eidgenossenschaft, nach Einsicht einer Botschaft des Bundesrates vom 30. Januar 1903, beschliesst:

Art. 1. Die Einführung lebender ausländischer Brieftauben in die Schweiz ohne Bewilligung der schweizerischen Militärbehörde ist untersagt.

Art. 2. Die Bewilligung dazu ist bei der Generalstabsabteilung des schweizerischen Militärdepartements einzuholen unter Angabe von Name und Ort des Absenders, Zahl und Zweck der Brieftauben.

Art. 3. Die Trainierung von Brieftauben aus der Schweiz nach dem Auslande und umgekehrt ist verboten. Das schweizerische Militärdepartement ist berechtigt, auch Trainierungen im Inlande zu verbieten, wenn dieselben den staatlichen oder militärischen Interessen der Schweiz zuwiderlaufen.

Art. 4. Widerhandlungen gegen die Bestimmungen der Art. 1—3 dieses Gesetzes oder gegen ein auf Grund derselben vom Militärdepartement erlassenes Verbot werden mit Busse von Fr. 10—200 bestraft. Mit der

Busse ist die Konfiskation der vorschriftswidrig eingeführten oder gehaltenen Brieftauben zu Handen der eidgenössischen Brieftaubenstationen zu verbinden.

Die vorstehende Strafandrohung gilt auch für den Versuch.

Fremde Brieftauben, die auf schweizerischem Gebiet betroffen werden, sind zu töten.

Art. 5. Die Beamten und Angestellten der eidgenössischen Zoll- und Postverwaltung, sowie die Polizeibehörden der Kantone sind verpflichtet, Übertretungen der Vorschriften dieses Gesetzes zu verzeigen und vorläufig die Beschlagnahme der betreffenden Brieftauben zu verfügen.

Art. 6. Die Beurteilung der Übertretungen erfolgt nach dem kantonalen Verfahren betreffend Polizeiüberschreitungen durch die Behörden desjenigen Kantons, in welchem der Übertreter seinen Wohnsitz hat. Liegt dessen Wohnsitz ausserhalb des schweizerischen Gebietes, so geht der Gerichtstand an die Behörden des Begehungsortes in der Schweiz über.

Entziehen sich im Auslande wohnende Personen, welche ohne Erlaubnis ausländische Brieftaube in die Schweiz einführen oder hier auffliegen lassen, der Beurteilung durch die schweizerischen Gerichte, so werden die in Beschlag genommenen Tauben (Art. 5.) ohne weiteres konfisziert.

Art. 7. Vorbehalten bleiben besondere Vorschriften der Militärbehörde für Kriegszeiten und die strafrechtliche Verfolgung der Personen welche mittelst Einführung ausländischer Brieftauben oder Auffliegenlassen solcher in der Schweiz Verbrechen im Sinne der bürgerlichen oder militärischen Strafgesetze begehen.

Art. 8. Der Bundesrat ist beauftragt, auf Grundlage der Bestimmungen des Bundesgesetzes vom 17. Juni 1874, betreffend die Volksabstimmung über Bundesgesetze und Bundesbeschlüsse, die Bekanntmachung dieses Bundesgesetzes zu veranstalten und den Beginn der Wirksamkeit desselben festzusetzen.

Also beschlossen vom Ständerate.

Bern, den 24. Juni 1904.

Der Präsident: *A. Lachenal.*
Der Protokollführer: *Schatzmann.*

Also beschlossen vom Nationalrate,

Bern, den 24. Juni 1904.

Der Präsident: *Louis Martin.*
Der Protokollführer: *Ringier.*

Der schweizerische Bundesrat beschliesst:

Das vorstehende, unterm 6. Juli 1904 öffentlich bekannt gemachte Bundesgesetz ist in die eidgenössische Gesetzsammlung aufzunehmen und tritt mit dem 1. November 1904 in Kraft.

Bern, den 7. Oktober 1904.

Im Namen des schweiz. Bundesrates,

Der Kanzler der Eidgenossenschaft: *Ringier.*

Der Bundespräsident: *Comtesse.*

30.

FRANCE.

Rapport, décret et règlements relatifs aux attributions, en temps de Guerre, des autorités relevant de la Guerre et de la Marine, en ce qui concerne la surveillance et la défense des côtes; du 16/18 septembre 1904.

Journal officiel, 28 septembre, et 1er octobre 1904.

Rapport, décret et règlement relatifs aux attributions, en temps de guerre, des autorités relevant de la Guerre et de la Marine, en ce qui concerne la surveillance et la défense des côtes.

Monsieur le Président,

Le règlement du 17 février 1894, rendu exécutoire par décret du même jour, a déterminé les attributions, en cas de mobilisation, des préfets maritimes et des commandants des secteurs du littoral, en ce qui concerne la défense des côtes.

Les dispositions contenues dans ce règlement ne sont plus en harmonie avec l'organisation actuelle.

En conséquence, un règlement nouveau destiné à remplacer celui du 17 février 1894, a été établi, après entente avec M. le Ministre de la Marine.

Ce règlement fixe d'une manière plus précise les attributions respectives des autorités relevant des départements de la Guerre et de la Marine; il supprime les secteurs côtiers, dont le fonctionnement a été reconnu peu pratique, dans l'état actuel des choses et institue en temps de guerre, dans chaque place de guerre du littoral, un commandant du front de mer, placé sous les ordres du gouverneur et appartenant à la marine; il assure ainsi dans de meilleures conditions le concours réciproque que les deux départements doivent se prêter sur le littoral; il répond enfin à toutes les éventualités.

Si vous en approuvez les dispositions, j'ai l'honneur de vous prier de vouloir bien revêtir de votre signature le décret ci-joint destiné à le rendre exécutoire.

Veuillez agréer, Monsieur le Président, l'hommage de mon respectueux dévouement.

Paris, le 16 septembre 1904.

Le Ministre de la Guerre,
Gal L. André.

Le Président de la République française,

Vu l'article 13 du titre 1er de la loi du 10 juillet 1791 sur la conservation des places de guerre et postes militaires, et l'ordonnance du 3 janvier 1843, qui établissent la responsabilité du Ministre de la Guerre en ce qui concerne la défense des frontières de terre et de mer;

Vu le décret du 17 février 1894, portant approbation du règlement du même jour, relatif à la défense du littoral;

Vu la loi du 7 juillet 1900, portant organisation des troupes coloniales;

Vu le décret du 29 mars 1901 sur les attributions des préfets maritimes en tant que gouverneurs des ports de guerre chefs-lieux d'arrondissement maritime;

Sur le rapport du Ministre de la Guerre établi après entente avec le Ministre de la Marine,

Décrète:

Article premier. Est approuvé et rendu exécutoire le règlement, ci-après, qui abroge et remplace le règlement du 17 février 1894, ayant pour objet de déterminer, en cas de mobilisation, les attributions des préfets maritimes et des commandants de secteurs du littoral, en ce qui concerne la défense des côtes.

Art. 2. Le Ministre de la Guerre et le Ministre de la Marine sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret.

Fait à la Bégude-de-Mazenc, le 18 septembre 1904.

Emile Loubet.

Par le Président de la République:

Le Ministre de la Guerre,
Gal L. André.

Le Ministre de la Marine,
Camille Pelletan.

Règlement ayant pour objet de déterminer les attributions, en temps de guerre, des autorités relevant des départements de la guerre et de la marine, en ce qui concerne la surveillance et la défense des côtes.

Paris, le 18 septembre 1904.

Art. 1er. Les préfets maritimes sont chargés, en cas de guerre, de la surveillance du littoral de leur arrondissement et de sa défense contre un ennemi flottant. Ils exercent la haute direction des services d'éclairage et de reconnaissance des navires.

Par application de l'article 13 du titre 1er de la loi du 10 juillet 1791, ils disposent à cet effet, dès l'ordre de mobilisation, dans les conditions spécifiées par le présent règlement, et par délégation permanente du Ministre de la Guerre, des éléments dépendant du département de la guerre, qui concourent à la défense immédiate du littoral contre un ennemi flottant.

Art. 2. En vue de l'accomplissement de cette mission, un officier de marine exerce, en temps de guerre, dans chaque place de guerre du littoral et sous les ordres du gouverneur, les fonctions de commandant de l'ensemble du front de mer de la place. Les attributions et relations de cet officier avec le préfet maritime sont spécifiées aux articles 5 et suivants.

Art. 3. Les généraux commandant les régions côtières sont chargés, en cas de guerre, de la défense de leur région contre un ennemi qui aurait débarqué ou qui prendrait des dispositions pour mettre des troupes à terre.

Par exception à cette règle, la 2e région n'est pas considérée comme région côtière; la subdivision d'Abbeville est rattachée en temps de guerre à la 1re région, dans l'organisation défensive du littoral.

Art. 4. Les généraux commandant les régions côtières disposent pour cette défense, de toutes les troupes mobiles constituées sur leur territoire ou placées temporairement sous leurs ordres.

Leur autorité sur les places de guerre du littoral, à partir du moment où l'ennemi prendrait des dispositions de débarquement, est définie par l'article 186 du décret sur le service des places.

Art. 5. L'officier de marine commandant du front de mer a, sous son autorité, en temps de guerre, dans chaque place:

1° Les éléments flottants appartenant à la marine, mis à sa disposition par ce département;

2° Les moyens de défense fixes et d'information dépendant du département de la marine (lignes de torpilles, estacades, projecteurs et postes de reconnaissance de la marine, sémaphores); les sémaphores ne cessent pas néanmoins d'être en communication directe avec les préfets maritimes;

3° Les batteries de côte après leur mobilisation;

4° Les petits détachements chargés, dans le rayon d'action de ces batteries, de la surveillance du littoral et de la garde des points importants (sémaphore, phares, etc.).

5° Les fractions de la garnison que le gouverneur jugerait opportun de mettre temporairement à sa disposition pour la défense du front de mer.

Art. 6. L'emploi des éléments indiqués au paragraphe 1er de l'article 5 reste soumis à l'autorité du département de la marine et peut faire l'objet d'ordre donnés directement par le préfet maritime au commandant du front de mer. Celui-ci en adresse des comptes rendus au gouverneur.

Les éléments visés aux paragraphes 2, 3, 4 et 5 ne cessent à aucun moment de relever de l'autorité du gouverneur.

Lorsqu'il y aura lieu de faciliter les mouvements de la flotte ou d'appuyer les opérations navales qui pourraient se dérouler dans le voisinage des places, les gouverneurs recevront pour la mise en œuvre des éléments visés aux paragraphes 2 et 3 des instructions du préfet maritime de l'arrondissement.

Art. 7. L'action des préfets maritimes sur les fronts de mer des places de leur arrondissement s'exerce, en temps de guerre, soit par une correspondance postale ou télégraphique avec les gouverneurs, soit par des communications verbales transmises à ces derniers par des officiers délégués du préfet maritime.

Art. 8. Dans les limites où leur responsabilité le permet, les gouverneurs se conforment aux instructions de préfets maritimes et défèrent aux invitations qu'ils en reçoivent pour tout ce qui concerne le concours ou l'appui que leur place peut prêter à la flotte.

De même, en cas d'attaque d'une place, les éléments flottants, même ceux étrangers à la place que les circonstances y auraient amenés et qui n'auraient pas d'autre mission expresse à exécuter, doivent concourir à sa défense.

Art. 9. Les commandants de fronts de mer adressent directement au préfet maritime toutes informations concernant les mouvements de navires, la surveillance du littoral et la mise en œuvre des éléments maritimes. Ils en rendent compte au gouverneur. Celui-ci renseigne le préfet maritime sur toutes les questions relatives au front de mer de la place.

Les gouverneurs communiquent au général commandant la région tous renseignements ou instructions intéressant à la fois la défense de la place et celle du littoral.

Art. 10. Les préfets maritimes et les commandants de front de mer reçoivent, dès le temps de paix, des lettres de commandement délivrées par le ministre de la guerre, d'une part, et par le ministre de la marine, de l'autre, pour définir leurs pouvoirs sur les éléments qui dépendent de chacun de ces deux départements.

Les ministres de la guerre et de la marine se donnent réciproquement communication du libellé des lettres de commandement qu'ils ont ainsi délivrées.

Les lettres de commandement peuvent être impersonnelles.

Art. 11. Les ministres de la guerre et de la marine s'informent réciproquement des modifications apportées dans l'affectation des éléments ou des troupes de leur départements respectifs primitivement employés dans les places maritimes, lorsqu'ils jugent nécessaire de donner à tout ou partie de ces éléments ou troupe une autre destination.

Art. 12. Les préfets maritimes reçoivent communication des plans de défense des places de leur arrondissement. Ils soumettent au commandant du corps d'armée les observations qu'ils peuvent avoir à formuler, en ce qui concerne les fronts de mer.

Les commandants des fronts de mer peuvent être convoqués à des époques indéterminées pour visiter les parties de la place sur lesquelles s'étendra leur autorité en temps de guerre et étudier les moyens mis à leur disposition.

Enfin, certains exercices spéciaux peuvent être effectués dans les limites des crédits budgétaires, après entente entre les départements de

la guerre et de la marine, en vue d'étudier l'application des dispositions contenues dans le présent règlement.

Art. 13. En dehors des places, les éléments ou troupes appartenant soit au département de la guerre, soit à celui de la marine, relèvent exclusivement de leurs départements respectifs qui en conservent l'entière disposition.

Le département de la guerre est toutefois chargé de la garde de tous les points importants du littoral dont il est nécessaire d'assurer la conservation, mais il ne s'immisce pas dans le fonctionnement ou l'emploi des éléments qui appartiennent à d'autres départements.

Ce service de garde est en principe organisé par subdivision de région, et fonctionne sous l'autorité du commandant de la subdivision. Il en est de même du service de surveillance du littoral assuré par le personnel des douanes.

Les renseignements obtenus par les sémaphores, les postes de surveillance et autres organes d'information relevant de l'un ou l'autre département sont toujours communiqués en double au commandant de la région et au préfet maritime, comme intéressant la défense, aussi bien sur terre que sur mer.

Art. 14. La surveillance et la défense du littoral de la Corse et du littoral de l'Algérie et de la Tunisie incombent respectivement en temps de guerre, au gouverneur de la Corse et au général commandant le 19e corps d'armée.

En Corse, le commandant de la marine exerce, sous l'autorité du gouverneur les attributions du commandant des fronts de mer de l'île.

En Algérie et en Tunisie, les commandants de la marine ont, sous la haute autorité du général commandant le 19e corps d'armée, les attributions spécifiées dans le présent règlement pour les préfets maritimes en France.

Dans les places d'Alger, Oran et Bizerte, un officier de marine exerce, en temps de guerre, sur les ordres du gouverneur de la place, les fonctions de commandant de front de mer.

En Corse, en Algérie et en Tunisie, l'emploi des éléments flottants reste à la disposition du ministre de la marine, qui adresse directement à cet effet ses instructions aux commandants de la marine. Ceux-ci en rendent compte au gouverneur de l'île ou au général commandant le 19e corps d'armée.

Les sémaphores restent sous la direction technique du service de la marine et doivent toujours assurer, en première urgence, la transmission des communications relatives aux opérations navales.

L'arsenal de Bizerte, les bassins de radoub, ateliers, magasins, spécialement créés pour les besoins de la flotte relèvent exclusivement des commandants de la marine.

Art. 15. Le tableau ci-après donne l'indication des places de guerre du littoral:

Tableau des places de guerre du littoral

Régions de Corps d'Armée	Désignation des Places	Arrondissements Maritimes
1re région . . .	Dunkerque-Bergues	1er arrondissement.
	Calais	Idem.
	Boulogne	Idem.
3e région . . .	Le Havre	Idem.
10e région . . .	Côte est du Cotentin	Idem.
	Cherbourg	Idem.
	Saint-Malo	2e arrondissement.
	Ile Bréhat	Idem.
11e région . . .	Brest-Quelern-Ouessant	2e arrondissement.
	Lorient-Port-Louis-Groix	3e arrondissement.
	Quiberon-Penthièvre	Idem.
	Belle-Isle	Idem.
	Basse-Loire	Idem.
	Ile d'Yeu	4e arrondissement.
18e région . . .	La Rochelle Ré	Idem.
	Rochefort-Aix-Oléron	Idem.
	Embouchure de la Gironde	Idem.
16e région . . .	Port-Vendres	5e arrondissement.
15e région . . .	Marseille	Idem.
	Toulon-Iles d'Hyères	Idem.
	Golfe-Jouan	Idem.
	Nice-Villefranche	Idem.
	Corse	Commandant de la marine en Corse.
Algérie	Oran	Commandant de la marine en Algérie.
	Alger	Idem.
Tunisie	Bizerte	Commandant de la marine en Tunisie.

Le Ministre de la Guerre.
Gal L. André.

Le Ministre de la Marine.
G. Pelletan.

31.

CHINE.

Accession de l'Empire de Chine à la Convention de Genève, du 22 août 1864; faite le 29 juin 1904.

Treaty Series. No. 5. 1904.

M. Carlin to the Marquess of Lansdowne. (Received July 15.)

Londres, 14 juillet 1904.

M. le Marquis,

Sur l'ordre de mon Gouvernement, j'ai l'honneur de faire part à votre Seigneurie de l'accession, en date du 29 juin 1904 de l'Empire de Chine à la Convention de Genève, du 22 août 1864 pour l'amélioration du sort des militaires blessés dans les armées en campagne.

Je serais fort obligé à votre Seigneurie de vouloir bien consentir à me donner acte de la présente communication, et vous prie d'agréer, &c.

(Signé) *Carlin.*

(Translation).

London, July 14 1904.

M. le Marquis,

By direction of my Government I have the honour to acquaint your Lordship of the accession, under date of the 29th June 1904, of the Empire of China to the Geneva Convention of the 22nd August 1864, for the amelioration of the condition of wounded soldiers in armies in the field.

I shall be much obliged if your Lordship will be so good as to take note of this communication, and I have, &c.

(Signed) *Carlin.*

The Marquess of Lansdowne to M. Carlin.

Sir, Foreign Office, July 19, 1904.

I have the honour to acknowledge the receipt of your note of the 14th instant, in which you inform me that, on the 29th ultimo, the Government of China notified the accession of that State to the Geneva Red Cross Convention of the 22nd August 1864, for the amelioration of the wounded in armies in the field.

I have, &c.

(Signed) *Lansdowne.*

32.

BULGARIE, TURQUIE.

Arrangement concernant la suppression des menées subversives contre l'Empire Ottoman et protocole y annexé; du $\frac{26 \text{ mars}}{8 \text{ avril}}$ 1904.

Archives diplomatiques. T. 90. 1904.

Le Gouvernement Impérial ottoman et la Principauté de Bulgarie sont tombés d'accord sur les points suivants:

1° La Principauté de Bulgarie s'engage à empêcher aussi bien sur son territoire que dans la Roumélie-Orientale, la formation de comités révolutionnaires et de bandes armées ainsi que toutes menées subversives contre l'Empire et à punir avec toute la rigueur des lois ceux de ses ressortissants qui, ayant commis dans les provinces voisines des actes de nature à troubler l'ordre public, se réfugieraient soit en Bulgarie, soit dans la Roumélie-Orientale;

2° La Principauté prendra les mesures nécessaires pour empêcher l'introduction, dans les Vilayets avoisinants, de toutes matières explosibles ou empoisonnées, ainsi que de tous produits pouvant nuire à la santé publique;

3° Les réformes convenues entre la Turquie, l'Autriche-Hongrie et la Russie pour les Vilayets de Salonique, Monastir et Kossovo seront appliquées par le Gouvernement Impérial ottoman. Par conséquent, l'amnistie générale que, dans Sa haute clémence, Sa Majesté Impériale le Sultan s'est plu à accorder, recevra aussi son plein effet. En conséquence, tous ceux qui se trouvent détenus ou exilés sous l'accusation ou la prévention de s'être livrés directement ou indirectement à des actes révolutionnaires, ainsi que tous les condamnés politiques, seront mis en liberté et renvoyés dans leurs pays, à l'exception toutefois des criminels condamnés pour attentats à la dynamite contre des bateaux, chemins de fer, ponts et établissements publics;

4° Les habitants des provinces de Roumélie qui, par suite des troubles, se sont, depuis deux ans, rendus en Bulgarie ou dans la Roumélie-Orientale ou qui, étant restés dans le pays, auraient eu leurs maisons détruites, trouveront, à leur retour dans leurs villages, assistance auprès des autorités impériales pour la reconstruction de leurs habitations et la restitution de leurs terres;

5° Un arrangement spécial interviendra pour la livraison réciproque des criminels et des déserteurs qui s'enfuiraient de la capitale ou des autres provinces de l'Empire dans la Principauté et la Roumélie-Orientale ou de ces dernières dans les autres parties de l'Empire. Afin d'empêcher le passage par la ligne de démarcation, de brigands et de bandes, des corps mixtes civils et militaires seront établis par le Gouvernement Impérial et la Principauté sur ladite ligne et un accord séparé devra être fait à ce sujet.

Une commission mixte sera instituée pour examiner et régler les questions restées en suspens de part et d'autre et devra se mettre immédiatement à l'œuvre;

6° Les mesures douanières exceptionnellement appliquées ces derniers temps aux provenances de la Bulgarie et de la Roumélie-Orientale seront supprimées et l'on reviendra aux mêmes formalités et facilités que par le passé;

Des dispositions efficaces seront prises de part et d'autre pour assurer la sécurité de la ligne de démarcation;

7° Les trains du chemin de fer circuleront librement et aucun obstacle ne sera apporté au voyage des Bulgares munis de papiers en règle qui viendraient de la Principauté ou de la Roumélie-Orientale pour leurs affaires;

8° Tous les sujets de l'Empire sans distinction étant admis aux fonctions publiques, suivant leurs aptitudes, les emplois civils et judiciaires continueront à être accessibles aux habitants bulgares réunissant les qualités requises.

En foi de quoi, Leurs Excellences Said Pacha, Président du Conseil d'Etat, et Zéki Pacha, aide-de-camp de Sa Majesté Impériale le Sultan et Grand-Maître de l'Artillerie, de la part du Gouvernement Impérial ottoman, et M. Natchovits, spécialement délégué à cet effet par le Gouvernement bulgare, ont signé le présent acte et y ont apposé leurs sceaux.

Fait à Constantinople, le 26 mars (8 avril) 1904.

Signé: (L. S.) *Said.*
(L. S.) *Zéki.*
(L. S.) *G.-D. Natchovits.*

Protocole.

Le Gouvernement Impérial ottoman et la Principauté de Bulgarie feront des arrangements spéciaux:

1° Sur les mesures à prendre de part et d'autre pour assurer la sécurité de la ligne de démarcation;

2° Pour la réglementation du service postal et télégraphique ainsi que pour les permis de voyage:

3° Pour la remise réciproque des criminels et des déserteurs avec leurs armes et munitions:

4° Sur les conditions de l'indigénat par rapport au service militaire;

5° Sur les attributions des Agents commerciaux respectifs et

6° Pour le raccordement futur des voies ferrées conformément aux intérêts des deux parties.

Constantinople, le 26 mars (8 avril) 1904.

Signé: (L. S.) *Said.*
(L. S.) *Zéki.*
(L. S.) *G.-D. Natchovits.*

33.

SERBIE.

Note du Gouvernement serbe, refusant son accès à la Convention sanitaire du 19 mars 1897*); signée à Belgrade, le $\frac{25 \text{ janvier}}{7 \text{ février}}$ 1899.

Belgrade, le $\frac{25 \text{ janvier}}{7 \text{ février}}$, 1899.

En réponse aux notes de la Légation de Sa Majesté le Roi d'Italie du 4/16 et 6/18 février, 1898, le Ministère des Affaires Étrangères a l'honneur de l'informer que le Gouvernement Royal, à son plus grand regret, ne peut consentir à l'adhésion de la Serbie aux ratifications de la Convention Sanitaire de Venise, pour les raisons suivantes:

1. Parce que dans la séance plénière du 2 mars 1898, de la Conférence, le Délégué du Royaume de Serbie, M. le Dr. Jovanovitch-Batout, a eu l'honneur de présenter un rapport, dans lequel il s'étendait sur l'état déplorable de la ville de Salonique et de son port, qui, d'après des données de statistique, est visité annuellement par environ 4,123 navires, provenant de tous les parages de l'Orient, et que, par suite de ces considérations, le Délégué Serbe a demandé que la Conférence veuille bien prendre la même décision relativement aux mesures prophylactiques à adopter pour l'amélioration de l'état sanitaire de Salonique et de son port que celle qui a été prise par la Conférence de Dresde relativement à l'amélioration de l'état sanitaire de la ville de Soulina (voir procès-verbal de la Conférence).

2. Vu que la Conférence, ni en séance ni dans la Commission, n'a pris aucune décision positive relativement au rapport du Délégué du Royaume de Serbie, qui s'est vu obligé de renouveler sa proposition dans la séance du 11 mars, et dont seulement acte a été pris (voir le procès-verbal de la séance).

3. Enfin, en présence d'un tel état de choses, le Gouvernement Royal se voit obligé d'approuver les réserves formulées dans le second Article du projet de son Délégué, et, par suite, de ne pouvoir procéder à la ratification de la Conférence de Venise, afin d'être libre, le cas échéant, de prendre telles mesures sanitaires qu'il jugera à propos pour préserver la Serbie de la contagion de la peste.

En conséquence, le Ministère des Affaires Étrangères a l'honneur de communiquer la présente résolution à la Légation de Sa Majesté le Roi d'Italie, avec prière de vouloir bien la porter à la connaissance de son Gouvernement, aux fins de la transmettre au Bureau International de la Convention Sanitaire.

(Signature.)

*) V. **N. R. G.** 2e s. XVIII. 339.

34.

CONGO.

Décret du Roi-Souverain de l'État Indépendant du Congo, interdisant l'importation des boissons alcooliques à base d'absinthe. Ostende, le 15 octobre 1898.

Léopold II, Roi des Belges, Souverain de l'État Indépendant du Congo, à tous présents et à venir, salut:

Sur la proposition de notre Secrétaire d'État,

Nous avons décrété et décrétons:

Art. 1er. L'importation et le débit des boissons alcooliques, à base d'absinthe, sont interdits dans tout le territoire de l'État.

2. Toute contravention à l'Article 1er est punie d'une amende de 100 fr. à 5,000 fr. et de quinze jours à un mois de servitude pénale, ou d'une de ces peines seulement.

Les liquides alcooliques ayant fait l'objet de la contravention sont en outre saisis et confisqués.

3. Tous chefs maisons de commerce ou autres personnes ayant des employés ou des ouvriers sous leurs ordres sont responsables des contraventions au présent Décret commises par ces derniers.

4. Notre Secrétaire d'État est chargé de l'exécution du présent Décret, qui entre en vigueur ce jour.

Donné à Ostende, le 15 octobre 1898.

Léopold.

Par le Roi-Souverain:
van Eetvelde, Secrétaire d'État.

35.

GRANDE-BRETAGNE, CONGO.

Correspondance concernant les affaires du Congo; du 8 août 1903.

Parliamentary Papers. Presented to both Houses of Parliament by Command of His Majesty. October 1903.

The Marquess of Lansdowne to His Majesty's Representatives at Paris, Berlin, Rome, St. Petersburgh, Vienna, Madrid, Constantinople, Brussels, Lisbon, the Hague, Copenhagen, and Stockholm.

Sir, Foreign Office, August 8, 1903.

The attention of His Majesty's Government has during recent years been repeatedly called to alleged cases of ill-treatment of natives and to the existence of trade monopolies in the Independent State of the Congo. Representations to this effect are to be found in Memorials from philanthropic Societies, in communications from commercial bodies, in the public press, and in despatches from His Majesty's Consuls.

The same matters formed the subject of a debate in the House of Commons on the 20th ultimo, when the House passed the Resolution, a copy of which is inclosed.

In the course of the debate, the official record of which is also inclosed, it was alleged that the object of the Administration was not so much the care and government of the natives as the collection of revenue; that this object was pursued by means of a system of forced labour, differing only in name from slavery; that the demands upon each village were exacted with a strictness which constantly degenerated into great cruelty, and that the men composing the armed force of the State were in many cases recruited from the most warlike and savage tribes, who not infrequently terrorized over their own officers and maltreated the natives without regard to discipline or fear of punishment.

As regards the ill-treatment of natives, a distinction may be drawn between isolated acts of cruelty committed by individuals, whether in the service of the State or not, and a system of administration involving and accompanied by systematic cruelty or oppression.

The fact that many individual instances of cruelty have taken place in the Congo State is proved beyond possibility of contradiction by the occurrence of cases in which white officials have been convicted of outrages on natives. These white officials must, however, in view of the vast extent of the territory under their administration, in most cases be of necessity isolated the one from the other, with the result that detection becomes

additionally difficult. It is therefore not unfair to assume that the number of convictions falls considerably short of the number of actual offences committed.

It is, however, with regard to the system of administration that the most serious allegations are brought against the Independent State.

It is reported that no efforts are made to fit the native by training for industrial pursuits; that the method of obtaining men for labour or for military service is often but little different from that formerly employed to obtain slaves; and that force is now as much required to take the native to the place of service as it used to be to convey the captured slave. It is also reported that constant compulsion has to be exercised in order to exact the collection of the amount of forest produce allotted to each village as the equivalent of the number of days' labour due from the inhabitants, and that this compulsion is often exercised by irresponsible native soldiers uncontrolled by any European officer.

His Majesty's Government do not know precisely to what extent these accusations may be true; but they have been so repeatedly made, and have received such wide credence, that it is no longer possible to ignore them, and the question has now arisen whether the Congo State can be considered to have fulfilled the special pledges, given under the Berlin Act, to watch over the preservation of the native tribes, and to care for their moral and material advancement.

The graver charges against the State relate almost exclusively to the upper valleys of the Congo and of its affluents. The lands forming these vast territories are held either by the State itself or by Company closely connected with the State, under a system which, whatever its object, has effectually kept out the independent trader, as opposed to the owner or to the occupier of the soil, and has consequently made it difficult to obtain independent testimony.

His Majesty's Government have further laboured under the disadvantage that British interests have not justified the maintenance of a large Consular staff in the Congo territories. It is true that in 1901 His Majesty's Government decided to appoint a Consul of wide African experience to reside permanently in the State, but his time has been principally occupied in the investigation of complaints perferred by British subjects, and he has as yet been unable to travel into the interior and to acquire, by personal inspection, knowledge of the enormous territory forming his district.

His reports on the cases of British subjects, which have formed the basis of representations to the Government of the Independent State, afford, however, examples of grave maladministration and ill-treatment. These cases do not concern natives of the Congo State, and are therefore in themselves alien to the subject of this despatch; but as they occured in the immediate vicinity of Boma, the seat of the central staff, and in regard to British subjects, most of whom were under formal engagements, they undoubtedly lead to the belief that the natives, who have no one in

the position of a Consul to whom they can appeal and have no formal engagements, receive even less consideration at the hands of the officers of the Government.

Moreover, information which has reached His Majestys Government from British officers in territory adjacent to that of the State tends to show that, notwithstanding the obligations accepted under Article VI of the Berlin Act, no attempt at any administration of the natives is made, and that the officers of the Government do not apparently concern themselves with such work, but devote all their energy to the collection of revenue. The natives are left entirely to themselves, so far as any assistance in their government or in their affairs is concerned. The Congo stations are shunned, the only natives seen being soldiers, prisoners, and men who are brought in to work. The neighbourhood of stations which are known to have been populous a few years ago is now uninhabited, and emigration on a large scale takes place to the therritory of neighbouring States, the natives usually averring that they are driven away from their homes by the tyranny and exaction of the soldiers.

The sentiments which undoubtedly animated the founders of the Congo State and the Representatives of the Powers at Berlin were such as to deserve de cordial sympathy of the British Government, who have been loath to believe either that the beneficent intentions with which the Congo State was constituted, and of which it gave so solemn a pledge at Berlin, have in any way been abondoned, or that every effort has not been made to realize them.

But the fact remains that there is a feeling of grave suspicion, widely prevalent among the people of this country, in regard to the condition of affairs in the Congo State, and there is a deep conviction that the many charges brought against the State's administration must be founded on a basis of thruth.

In these circumstances, His Majesty's Government are of opinion that it is incumbent upon the Powers parties to the Berlin Act to confer together and to consider whether the obligations undertaken by the Congo State in regard to the natives have been fulfilled; and, if not, whether the Signatory Powers are not bound to make such representations as may secure the due observance of the provisions contained in the Act.

As indicated at the beginning of this despatch, His Majesty's Government also wish to bring to the notice of the Powers the question which has arisen in regard to rights of trade in the basin of the Congo.

Article I of the Berlin Act provides that the trade of all nations shall enjoy complete freedom in the basin of the Congo; and Article V provides that no Power which exercises sovereign rights in the basin shall be allowed to grand therein a monopoly or favour of any kind in matters of trade.

In the opinion of His Majesty's Government, the system of trade now existing in the Independent State of the Congo is not in harmony with these provisions.

With the exception of a relatively small area on the lower Congo, and with the further exception of the small plots actually occupied by the huts and cultivation patches of the natives, the whole territory is claimed as the private property either of the State or of holders of land concessions. Within these regions the State or, as the case may be, the concession-holder alone may trade in the natural produce of the soil. The fruits gathered by the natives are accounted the property of the State, or of the concession-holder, and may not be acquired by others. In such circumstances, His Majesty's Government are unable to see that there exists the complete freedom of trade or absence of monopoly in trade which is required by the Berlin Act. On the contrary, no one other than the agents of the State or of the concession-holder has the opportunity to enter into trade relations with the natives; or if he does succeed in reaching the natives, he finds that the only material which the natives can give in exchange for his trade goods or his money are claimed as having been the property of the State or of the concession-holder from the moment it was gathered by the native.

His Majesty's Government in no way deny either that the State has the right to partition the State lands among bonâ fide occupants, or that the natives will, as the land is so divided out among bonâ fide occupiers, lose their right of roaming over it and collecting the natural fruits which it produces. But His Majesty's Government maintain that until unoccupied land is reduced into individual occupation, and so long as the produce can only be collected by the native the native should be free to dispose of that produce as he pleases.

In these circumstances, His Majesty's Government consider that the time has come when the Powers parties to the Berlin Act should consider whether the system of trade now prevailing in the Independent State is in harmony with the provisions of the Act; and, in particular, whether the system of making grants of vast areas of territory is permissible under the Act if the effect of such grants is in practice to create a monopoly of trade by excluding all persons other than the concession-holder from trading with the natives in that area. Such a result is inevitable if the grants are made in favour of persons or Companies who cannot themselves use the land or collect its produce, but must depend for obtaining it upon the natives who are allowed to deal only with the grantees.

His Majesty's Government will be glad to receive any suggestions which the Governments of the Signatory Powers may be disposed to make in reference to this important question, which might perhaps constitute, wholly or in part, the subject of a reference to the Tribunal at the Hague.

I request that you will read this despatch to the Minister for Foreign Affairs, and leave a copy of it with his Excellency.

I am, &c.
(Signed) *Lansdowne.*

36.

ETATS-UNIS D'AMÉRIQUE, MEXIQUE.

Traité de compromis concernant les „Fonds pieux des Californies“ : signé à Washington, le 22 mai 1902.

Publications officielles du Bureau international de la Cour permanente d'Arbitrage. La Haye 1902.

Protocol of an agreement between the United States of America and the Republic of Mexico for the adjustment of certain contentions arising under what is known as „the pious fund of the Californias“.

Whereas, under and by virtue of the provisions of a convention entered into between the High Contracting Parties above named, of date July 4 1868, and subsequent contentions supplementary thereto, there was submitted to the Mixed Commission provided for by said convention, a certain claim advanced by and on behalf of the prelates of the Roman Catholic Church of California against the Republic of Mexico for an annual interest upon a certain fund known as „the pious fund of the Californias“ which interest was said to have accrued between February 2 1848, the date of the signature of the Treaty of Guadalupe Hidalgo, and February 1 1868, the date of the exchange of the ratifications of said convention above referred to; and

Whereas, said Mixed Commission, after considering said claim, the same being designated as n⁰ 498 upon the docket, and entitled Thaddeus Amat, Roman Catholic Bishop of Monterey, a corporation sole, and Joseph S. Alemany, Roman Catholic Bishop of San Francisco, a corporation sole, against the Republic of Mexico, adjudged the same adversely to the Republic of Mexico and in favor of said claimants, and made an award therein of Nine Hundred and Four Thousand, Seven Hundred and 99/100 (904, 700.99) dollars; the same as expressed in the findings of said Court, being for twenty-one years interest of the annual amount of Forty-three Thousand and Eighty and 99/100 (43,080.99) dollars upon Seven Hundred and Eighteen Thousand and Sixteen and 50/100 (718,016.50) dollars, said award being in Mexican gold dollars, and the said amount of Nine Hundred and Four Thousand, Seven Hundred and 99/100 (904, 700-99) dollars having been fully paid and discharged in accordance with the terms of said Convention; and

Whereas, the United States of America on behalf of said Roman Catholic Bishops, above named, and their successors in title and interest, have since such award claimed from Mexico further instalments of said interest, and have insisted that the said claim was conclusively established, and its amount fixed as against Mexico and in favor of said

original claimants and their successors in title and interest under the said first mentioned convention of 1868 by force of the said award as res judicata; and have further contended that apart from such former award their claim against Mexico was just, both of which propositions are controverted and denied by the Republic of Mexico, and the High Contracting Parties hereto, animated by a strong desire that the dispute so arising may be amicably, satisfactorily and justly settled, have agreed to submit said controversy to the determination of Arbitrators, who shall, unless otherwise herein expressed, be controlled by the provisions of the International Convention for the pacific settlement of international disputes, commonly known as the Hague Convention, and which arbitration shall have power to determine;

1. If said claim, as a consequence of the former decision, is within the governing principle of res judicata; and

2. If not, whether the same be just.

And to render such judgment or award as may be meet and proper under all the circumstances of the case.

It is therefore agreed by and between the United States of America, through their representative, John Hay, Secretary of State of the United States of America, and the Republic of Mexico, through its representative, Manuel de Azpiroz, Ambassador Extraordinary and Plenipotentiary to the United States of America for the Republic of Mexico as follows:

I. That the said contentions be referred to the special tribunal hereinafter provided, for examination, determinatiou and award.

II. The special tribunal hereby constituted shall consist of four arbitrators (two to be named by each of tbe High Contracting Parties) and an umpire to be selected in accordance with the provisions of the Hague Convention. The arbitrators to be named hereunder shall be signified by each of the High Contracting Parties to the other within sixty days after the date of this protocol. None of those so named shall be a native or citizen of the parties hereto. Judgment may be rendered by a majority of said Court.

All vacancies occurring among the members of said Court because of death, retirement or disability from any cause before a decision shall be reached, shall be filled in accordance with the method of appointment of the member affected as provided by said Hague Convention, and if occurring after said court shall have first assembled, will authorize in the judgment of the court an extension of time for hearing or judgment, as the case may be, not exceeding thirty days.

III. All pleadings, testimony, proofs, arguments of counsel and findings or awards of commissioners or umpire, filed before or arrived at by the Mixed Commission above referred to, are to be placed in evidence before the Court hereinbefore provided for, together with all correspondence between the two countries relating to the subject matter involved

in this arbitration; originals or copies thereof duly certified by the Departments of State of the High Contracting Parties being presented to said new tribunal. Where printed books are referred to in evidence by either party, the party offering the same shall specify volume, edition and page of the portion desired to be read, and shall furnish the Court in print the extracts relied upon; their accuracy being attested by affidavit. If the original work is not already on file as a portion of the record of the former Mixed Commission, the book itself shall be placed at the disposal of the opposite party in the respective offices of the Secretary of State or of the Mexican Ambassador in Washington, as the case may be, thirty days before the meeting of the tribunal herein provided for.

IV. Either party may demand from the other the discovery of any fact or of any document deemed to be or to contain material evidence for the party asking it; the document desired to be described with sufficient accuracy for identification, and the demanded discovery shall be made by delivering a statement of the fact or by depositing a copy of such document (certified by its lawful custodian, if it be a public document, and verified as such by the possessor, if a private one), and the opposite party shall be given the opportunity to examine the original in the City of Washington at the Department of State, or at the office of the Mexican Ambassador, as the case may be. If notice of the desired discovery be given too late to be answered ten days before the tribunal hereinbefore provided for shall sit for hearing, then the answer desired thereto shall be filed with or documents produced before the Court herein provided for as speedily as possible.

V. Any oral testimony additional to that in the record of the former arbitration may be taken by either party before any Judge, or Clerk of Court of Record, or any Notary Public, in the manner and, with the precautions and conditions prescribed for that purpose in the rules of the Joint Commission of the United States of America, and the Republic of Mexico, as ordered and adopted by that tribunal August 10, 1869, and so far as the same may be applicable. The testimony when reduced to writing, signed by the witness, and authenticated by the officer before whom the same is taken, shall be sealed up, addressed to the Court constituted hereby, and deposited so sealed up in the Department of State of the United States, or in the Department of Foreign Relations of Mexico, to be delivered to the Court herein provided for when the same shall convene.

VI. Within sixty days from the date hereof the Unitee States of America, through their agent or counsel, shall prepare and furnish to the Department of State aforesaid, a memorial in print of the origin and amount of their claim, accompanied by references to printed books, and to such portions of the proofs or parts of the record of the former arbitration, as they rely on in support of their claim, delivering copies of the same to the Embassy of the Republic of Mexico in Washington, for the use of the agent or counsel of Mexico.

VII. Within forty days after the delivery thereof to the Mexican Embassy the agent or counsel for the Republic of Mexico shall deliver to the Department of State of the United States of America in the same manner and with like reference a statement of its allegations and grounds of opposition to said claim.

VIII. The provisions of paragraphs VI and VII shall not operate to prevent the agents or counsel for the parties hereto from relying at the hearing or submission upon any documentary or other evidence which may have become open to their investigation and examination at a period subsequent to the times provided for service of memorial and answer.

IX. The first meeting of the arbitral court hereinbefore provided for shall take place for the selection of an umpire on September 1, 1902, at the Hague in the quarters which may be provided for such purpose by the International Bureau at the Hague, constituted by virtue of the Hague Convention hereinbefore referred to and for the commencement of its hearings, September 15, 1902, is designated; or if an umpire may not be selected by said date, then as soon as possible thereafter, and not later than October 15, 1902, at which time and place and at such other times as the court may set (and at Brussels, if the court should determine not to sit at the Hague) explanations and arguments shall be heard or presented as the court may determine, and the cause be submitted. The submission of all arguments, siatements of facts, and documents shall be concluded within thirty days after the time provided for the meeting of the court for hearing (unless the court shall order an extension of not to exceed thirty days) and its decision and award announced within thirty days after such conclusion, and certified copies thereof delivered to the agents or counsel of the respective parties and forwarded to the Secretary of State of the United States and the Mexican Ambassador at Washington, as well as filed with the Netherland Minister for Foreign Affairs.

X. Should the decision and award of the tribunal against the Republic of Mexico, the findings shall state the amount and in what currency the same shall be payable, and shall be for such amount as under the contentions and evidence may be just. Such final award, if any, shall be paid to the Secretary of State of the United States of America within eight months from the date of its making.

XI. The agents and counsel for the respective parties may stipulate for the admission of any facts, and such stipulation, duly signed, shall be accepted as proof thereof.

XII. Each of the parties hereto shall pay its own expenses, and one-half of the expenses of the arbitration, including the pay of the arbitrators; but such costs shall not constitute any part of the judgment.

XIII. Revision shall be permitted as provided in Article LV of the Hague Convention, demand for revision being made within eight days after announcement of the award. Proofs upon such demand shall be submitted within ten days after revision be allowed (revision only being granted,

if at all, within five days after demand therefor) and counterproofs within the following ten days, unless further time be granted by the court. Arguments shall be submitted within ten days after the presentation of all proofs, and a judgment or award given within ten days thereafter. All provisions applicable to the original judgment or award shall apply as far as possible to the judgment or award on revision. Provided that all proceedings on revision shall be in the French language.

XIV. The award ultimately given hereunder shall be final and conclusive as to the matters presented for consideration.

Done in dublicate in English and Spanish at Washington, this 22nd day of May, A. D. 1902,

John Hay.
M. de Azpiroz.

37.

ETATS-UNIS D'AMÉRIQUE, MEXIQUE.

Sentence arbitrale rendue par la Cour permanente d'Arbitrage de la Haye au sujet du différend survenu entre les Etats-Unis d'Amérique et le Mexique concernant les „Fonds pieux des Californies"; du 14 octobre 1902.

Publication officielle du Bureau international de la Cour permanente d'Arbitrage. La Haye 1902.

Le Tribunal d'Arbitrage, constitué en vertu du Traité conclu à Washington, le 22 mai 1902, entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains,

Attendu que, par un compromis, rédigé sous forme de Protocole, entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains, signé à Washington le 22 mai 1902, il a été convenu et réglé que le différend, qui a surgi entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains au sujet du „Fonds Pieux des Californies" dont les annuités étaient réclamées par les Etats-Unis d'Amérique, au profit de l'Archevêque de San Francisco et de l'Évêque de Monterey, au Gouvernement de la République Mexicaine, serait soumis à un Tribunal d'Arbitrage, constitué sur les bases de la Convention pour le règlement pacifique des conflits internationaux, signée à La Haye le 29 juillet 1899, qui serait composé de la manière suivante, savoir:

Le Président des Etats-Unis d'Amérique désignerait deux Arbitres non-nationaux et le Président des Etats-Unis Mexicains également deux Arbitres non-nationaux. Ces quatre Arbitres devraient se réunir le

1er septembre 1902 à La Haye afin de nommer le Surarbitre qui, en même temps, serait de droit le Président du Tribunal d'Arbitrage.

Attendu que le Président des Etats-Unis d'Amérique a nommé comme Arbitres:

Le très honorable Sir Edward Fry, Docteur en droit, autrefois siégeant à la Cour d'Appel, Membre du Conseil Privé de Sa Majesté Britannique, Membre de la Cour permanente d'Arbitrage, et

Son Excellence Monsieur de Martens, Docteur en Droit, Conseiller Privé, Membre du Conseil du Ministère Impérial des Affaires étrangères de Russie, Membre de l'Institut de France, Membre de la Cour permanente d'Arbitrage;

Attendu que le Président des Etats-Unis Mexicains a nommé comme Arbitres:

Monsieur T. M. C. Asser, Docteur en Droit, Membre du Conseil d'Etat des Pays-Bas, ancien Professeur à l'Université d'Amsterdam, Membre de la Cour permanente d'Arbitrage, et

Monsieur le Jonkheer A. F. de Savornin Lohman, Docteur en Droit, ancien Ministre de l'Intérieur des Pays-Bas, ancien Professeur à l'Université libre d'Amsterdam, Membre de la Seconde Chambre des Etats-Généraux, Membre de la Cour permanente d'Arbitrage;

Lesquels Arbitres, dans leur réunion du 1er septembre 1902, ont élu, conformément aux Articles XXXII—XXXIV de la Convention de La Haye du 29 juillet 1899, comme Surarbitre et Président de droit du Tribunal d'Arbitrage:

Monsieur Henning Matzen, Docteur en Droit, Professeur à l'Université de Copenhague, Conseiller extraordinaire à la Cour Suprême, Président du Landsthing, Membre de la Cour permanente d'Arbitrage.

Et attendu, qu'en vertu du Protocole de Washington du 22 mai 1902, les susnommés Arbitres, réunis en Tribunal d'Arbitrage. devraient décider:

1° Si la dite réclamation des Etats-Unis d'Amérique au profit de l'Archevêque de San Francisco et de l'Évêque de Monterey est régie par le principe de la res judicata, en vertu de la sentence arbitrale du 11 novembre 1875, prononcée par Sir Edward Thornton, en qualité de Surarbitre;

2° Si non, si la dite réclamation est juste, avec pouvoir de rendre tel jugement qui leur semblera juste et équitable;

Attendu que les susnommés Arbitres, ayant examiné avec impartialité et soin tous les documents et actes présentés au Tribunal d'Arbitrage par les Agents des Etats-Unis d'Amérique et des Etats-Unis Mexicains, et ayant entendu avec la plus grande attention les plaidoiries orales, présentées devant le Tribunal par les Agents et les Conseils des deux Parties en litige;

Considérant que le litige, soumis à la décision du Tribunal d'Arbitrage, consiste dans un conflit entre les Etats-Unis d'Amérique et les Etats-Unis Mexicains qui ne saurait être réglé que sur la base des traités internationaux et des principes du droit international;

Considérant que les Traités internationaux, conclus depuis l'année 1848 jusqu'au compromis du 22 mai 1902, entre les deux Puissances en litige, constatent le caractère eminemment international de ce conflit;

Considérant que toutes les parties d'un jugement ou d'un arrêt concernant les points débattus au litige s'éclairent et se complètent mutuellement et qu'elles servent toutes à préciser le sens et la portée du dispositif, à déterminer les points sur lesquels il y a chose jugée et qui partant ne peuvent être remis en question;

Considérant que cette règle ne s'applique pas seulement aux jugements des tribunaux institués par l'Etat, mais également aux sentences arbitrales, rendues dans les limites de la compétence fixées par le compromis;

Considérant que ce même principe doit, à plus forte raison, être appliqué aux arbitrages internationaux;

Considérant que la Convention du 4 juillet 1868, conclue entre les deux Etats en litige, avait accordé aux Commissions Mixtes, nommées par ces Etats, ainsi qu'au Surarbitre à désigner éventuellement, le droit de statuer sur leur propre compétence;

Considérant que dans le litige, soumis à la décision du Tribunal d'Arbitrage, en vertu du compromis du 22 mai 1902, il y a, non seulement identité des parties en litige, mais également identité de la matière jugée par la sentence arbitrale de Sir Edward Thornton comme Surarbitre en 1875 et amendée par lui le 24 octobre 1876;

Considérant que le Gouvernement des Etats-Unis Mexicains a consciencieusement exécuté la sentence arbitrale de 1875 et 1876, en payant les annuités adjugées par le Surarbitre;

Considérant que, depuis 1869, trente-trois annuités n'ont pas été payées par le Gouvernement des Etats-Unis Mexicains au Gouvernement des Etats-Unis d'Amérique et que les règles de la prescription, étant exclusivement du domaine du droit civil, ne sauraient être appliquées au présent conflit entre les Etats en litige;

Considérant, en ce qui concerne la monnaie, dans laquelle le paiement de la rente annuelle doit avoir lieu, que le dollar d'argent, ayant cours légal au Mexique, le paiement en or ne peut être exigé qu'en vertu d'une stipulation expresse;

Que, dans l'espèce, telle stipulation n'existant pas, la Partie défenderesse a le droit de se libérer en argent;

Que, par rapport à ce point, la sentence de Sir Edward Thornton n'a pas autrement force de chose jugée que pour les vingt et une annuités à l'égard desquelles le surarbitre a décidé que le paiement devait avoir lieu en dollars d'or Mexicains, puisque la question du mode de paiement ne concerne pas le fond du droit en litige, mais seulement l'exécution de la sentence;

Considérant que, d'après l'Article X du Protocole de Washington du 22 mai 1902, le présent Tribunal d'Arbitrage aura à statuer, en cas

de condamnation de la République du Mexique, dans quelle monnaie le paiement devra avoir lieu;

Par ces motifs, le Tribunal d'Arbitrage décide et prononce à l'unanimité ce qui suit:

1° Que la dite réclamation des Etats-Unis d'Amérique au profit de l'Archevêque de San Francisco et de l'Évêque de Monterey est régie par le principe de la res judicata, en vertu de la sentence arbitrale de Sir Edward Thornton du 11 novembre 1875 amendée par lui le 24 octobre 1876;

2° Que, conformément à cette sentence arbitrale, le Gouvernement de la République des Etats-Unis Mexicains devra payer au Gouvernement des Etats-Unis d'Amérique la somme d'un million quatre cent vingt mille six cent quatre-vingt-deux Dollars du Mexique et soixante-sept cents (1,420,682.$^{67}/_{100}$ Dollars du Mexique) en monnaie ayant cours légal au Mexique, dans le délai fixé par l'Article X du Protocole de Washington du 22 mai 1902.

Cette somme d'un million quatre cent vingt mille six cent quatre-vingt-deux Dollars et soixante-sept cents (1,420,682.$^{67}/_{100}$ Dollars) constituera le versement total des annuités échues et non payées par le Gouvernement de la République Mexicaine, savoir de la rente annuelle de quarante-trois mille cinquante Dollars du Mexique et quatre-vingt-dix-neuf cents (43,050.$^{99}/_{100}$ Dollars du Mexique) depuis le 2 février 1869 jusqu'au 2 février 1902;

3° Le Gouvernement de la République des Etats-Unis Mexicains paiera au Gouvernement des Etats-Unis d'Amérique le 2 février 1903, et chaque année suivante à cette même date du 2 février, à perpétuité la rente annuelle de quarante-trois mille cinquante Dollars du Mexique et quatre-vingt-dix-neuf cents (43,050.$^{99}/_{100}$ Dollars du Mexique) en monnaie ayant cours légal au Mexique.

Fait à La Haye, dans l'Hôtel de la Cour permanente d'Arbitrage, en triple original, le 14 octobre 1902.

Henning Matzen.
Edw. Fry.
Martens.
T. M. C. Asser.
A. F. de Savornin Lohman.

38.

CHINE.

Mémoire du Tsung-li-Yamên présenté à l'Empereur de Chine concernant les relations officielles entre les autorités locales chinoises et les Missions catholiques; du 15 mars 1899.

(Translation.)

China has long ago given her consent to the establishment of Mission Stations of the Roman Catholic religion in the various provinces. With the desire of maintaining peaceful relations between ordinary Chinese subjects and the converts, and of facilitating protective measures, the following proposals as to the reception of missionaries by local officials are submitted:

1. To define the various ranks of missionaries:

Bishops rank with Governors-General and Governors. They may ask for interviews with these officers. If a bishop returns to his country, or vacates his post on account of sickness, the priest who acts for him can also ask for interviews with the Governor-General and Governor.

Provicaires and head priests can ask for interviews with Treasurers, Judges, and Taotais. Other priests can ask for interviews with Prefects and Magistrates.

The Chinese officials of all ranks above-mentioned will return the courtesy in accordance with the rank of the priest.

2. Bishops must furnish the provincial authorities with a list, giving the names of the priests deputed to transact international business with the Chinese officials, and of the places where Missions are established, so that the provincial authorities can instruct their subordinates to treat with such priests according to these Regulations.

All those priests who ask for interviews, and those specially deputed to transact such business, must be Westerners; but in cases in which the Western priest cannot speak Chinese a Chinese priest may interpret.

3. In cases in which the bishop lives away from the provincial capital, hee need not naturally go to the said capital to ask for an interview with the Governor-General or Governor without cause. On occasions of a change of Governors or bishops, or of New Year's congratulations, the bishop may write to the provincial authorities or send his card as a matter of courtesy, and the provincial authorities will reciprocate.

In cases of change of priests, the new-comer must have a letter from the bishop before he can ask for interviews with the Chinese officials as above.

4. In grave cases connected with the Mission, bishops and priests must request the Minister of the nation specially intrusted by the Pope with the protection of Roman Catholic missionaries, or the Consul of that nation, to arrange the affairs with the Tsung-li Yamên or the local officials. They may also discuss and arrange the matter in the first instance with the local officials, so as to avoid complications. The local officials, when applied to in such cases, must at once discuss and arrange the affair in an equitable and friendly manner.

5. The local officials must, as occasion arises, exhort and constrain the ordinary Chinese to look upon the converts as comrades, and not to pick quarrels with them.

The bishops and priests, on their side, must instruct their converts to lead blameless lives, and so preserve the good name of the religion and the prospect and goodwill of the non-converts.

Should law-suits arise between converts and others, the local authorities must decide the same with impartiality. The priests must not interfere or favour their people. Thus it may be hoped that converts and people will live together on friendly terms.

39.

JAPON.

Loi réglant la situation des Missions religieuses au Japon; donnée à Tokio, le 27 juillet 1899.

(Translation.)

Art. 1. Persons who wish to engage in the propagation of religion shall furnish the particulars specified below and report their domicile, and, when they have no domicile, their place of residence, to the chief local authority having jurisdiction there, attaching a written account of their antecedents:

1) Name of religion;

2) Method of propagating the religion.

Persons who have neen engaged in the propagation of religion previous to the coming into force of this Notification, and still engaged in it, shall make the report mentioned in the preceding clause within two months after it comes into force.

2. Persons who whish to establish places of worship, churches, preaching rooms, or lecture halls, in order to devote them to religious purposes, shall furnish the particulars specified below, and shall obtain the

permission of the chief local authority having jurisdiction in the place where they are:

1) Reasons which require their establishment;

2) Limit of time within which their establishment will be completed;

3) Name and place where situated, as well as the essential facts relating to the site and buildings. A drawing must be attached;

4) Name of the religion;

5) Method of control and maintenance;

6) When responsible propagandists are appointed, their standing, and the method of selecting them.

If the places of worship, churches, preaching rooms, or lecture halls mentioned in the preceding clause are not established within the time stated in the sub-heading No. (2) of the preceding clause, the permission mentioned in the preceding clause shall lose its force.

The founders of places of worship, churches, praeching rooms, or lecture halls devoted to religious purposes from before the coming into force of this Notification, or when there are no founders, or there are impediments in the way of their so doing, the persons having control shall report the facts set forth in the 1st clause to the chief local authority having jurisdiction within two months after this Notification comes into force.

When the report mentioned in the preceding clause has been made, the permission mentioned in the 1st clause shall considered to have been obtained.

3. The founders, or when there are no founders, or there are impediments in the way of their doing so, the persons having control, mentioned in the preceding Article, shall furnish the chief local authority having jurisdiction with a written account of the antecedents of the persons having control and of the responsible propagandists. Similarly, in cases where the persons having control or the responsible propagandists are changed or increased in number.

4. When a change is made in the facts specified in any of the sub-headings of Article 1, persons who engage in the propagation of religion shall report the matter to the chief local autherity having jurisdiction within two weeks.

When it is proposed to make a change in the facts specified in any of the sub-headings of Article 2, the founders, or when there are no founders, or there are impediments in the way of their doing so, the persons having control shall furnish the reasons, and shall obtain the permission of the chief local authority having jurisdiction anew. But when a change of site is concerned, the permission of the chief local authority having jurisdiction in the place to which removal is to be made shall be obtained.

When places of worship, churches, preaching rooms, or lecture halls devoted to religious purposes are abandoned or removed, the fact of abandonment or removal shall be reported to the chief local authority having jurisdiction within two weeks.

5. With regard to propagandists of Buddhism or Shinto, and to the establishment, removal, or abandonment of Buddhist temples, monasteries, or meeting places, &c., the provisions hitherto existing shall all be followed.

6. This Notification shall come into force on and from the 4th August, 1899.

July 27, 1899.

Saigo Tsugumichi,
Minister of the Home Department.

40.

GRANDE-BRETAGNE, FRANCE.

Correspondance concernant l'application de la loi française concernant les Associations du 1er juillet 1901 sur les établissements religieux anglais en France; du 2 juillet 1901 au 4 août 1903.

Parliamentary Papers. Presented to both Houses of Parliament by Command of His Majesty. August 1903.

French Law relative to the Contract of Association.

(Translation.)

The Senate and the Chamber of Deputies have adopted.

The President of the Republic promulgates the Law, of which the tenour is as follows:

Chapter I.

Article 1. Association is the convention by which two or more persons combine permanently their knowledge or their efforts with an object other than that of sharing profits. It is governed, as regards its validity, by the general principles of the law as they apply to contracts and obligations.

Art. 2. Associations of persons may be formed freely without authorization or previous declaration, but they can only acquire a legal status if they have conformed with the provisions of Article 5.

Art. 3. Any Association founded for an illicit purpose or object, contrary to law or morality, or which is designed to affect injuriously the integrity of the national territory and the Republican form of Government, shall be null and void.

Art. 4. Any member of an Association not formed for a fixed period can withdraw from it at any time after paying up the contributions already due and those for the current year, and this notwithstanding any provision to the contrary.

Art. 5. Any Association desirous of acquiring the legal status defined in Article 6 must be publicly advertised by its founders.

The previous declaration must be made at the Prefecture of the department or at the Sub-Prefecture of the district in which the Association shall have its head-quarters. It must notify the title and the object of the Association, where its establishments are situated, and the names, professions, and domiciles of those who are, in any manner, responsible for its administration or direction. A receipt shall be given for it.

Two copies of the Statutes must be annexed to the declaration.

Associations must notify, within three months, any changes which may have occurred in their administration or direction, as well as any modifications introduced in their Statutes.

These modifications and changes shall only take effect legally from the day on which they shall have been notified.

The modifications and changes must, moreover, be entered in a special register which must be shown to the administrative or judicial authorities whenever they ask for it.

Art. 6. Any Association regularly notified can, without any special authorization, be a party to legal proceedings, acquire with the liabilities attaching tho them, possess and administer, besides State departmental, and communal subventions:

1. The contributions of its members or the sums by which these contributions may have been redeemed, provided such sums do not exceed 500 fr.

2. The building intended for the administration of the Association and the meetings of its members.

3. Real property strictly necessary for the accomplishment of its proposed object.

Art. 7. In case of nullity, as provided in Article 3, the dissolution of the Association shall be pronounced by the Civil Tribunal, either at the request of any interested person, or at the instance of the Representative of the Government.

In case of infringement of the provisions of Article 5, the dissolution can be pronounced at the request of any interested person or of the Representative of the Government.

Art. 8. Offenders against the provisions of Article 5 shall be punished by a fine of from 16 fr. to 200 fr., and the fine shall be doubled if the offence be repeated.

Founders, directors, or administrators of an Association continued or reconstituted illegally after a sentence of dissolution shall be punished by a fine of from 16 fr. to 5,000 fr., and by imprisonment of from six days to one year.

All persons assisting a meeting of members of a dissolved Association by allowing the use of a building belonging to them shall incur the same punishment.

Art. 9. In case of a dissolution, voluntary, statutory, or pronounced judicially, the property of the Association shall be treated in conformity with the Statutes, or, in default of any statutory provision, in accordance with rules decided at a general meeting.

Chapter II.

Art. 10. Associations can be recognized as of public utility by Decrees issued in the form of the Public Administrative Regulations.

Art. 11. These Associations can perform all civil acts not prohibited by their Statutes, but they cannot possess or aquire real property other than that necessary for their proposed object. All the personal property of an Association must be invested in inscribed stock.

They can receive donations and legacies under the conditions laid down in Article 910 of the Civil Code and Article 54 of the Law of the 4th February, 1901. Real property included in an act of donation or left by will, and which is not necessary for carrying on the Association, must be alienated within the period and in the manner indicated in the Decree or Order which authorizes the acceptance of the gift; the value of it must be paid into the Association Treasury.

They cannot accept a donation of either personal or real property with reservation of the usufruct for the benefit of the donor.

Art. 12. Associations chiefly composed of foreigners, those which have foreigners as administrators or which are established abroad, and whose proceedings are calculated to disturb the normal condition of the price of securities or to menace the internal or external security of the State, under the conditions laid down in Articles 75 to 101 of the Penal Code, can be dissolved by a Decree of the President of the Republic, issued in a Council of Ministers.

Founders, directors, or administrators of an Association continued or reconstituted illegally under the Decree of dissolution shall incur the punishments provided by Article 8, paragraph 2.

Chapter III.

Art. 13. No religious community can be formed without an authorization given by a Law defining the conditions of its proceedings.

It can found no new establishment without a Decree issued in a Council of State.

The dissolution of the community or the closing of any establishment can be pronounced by Decree issued in a Council of Ministers.

Art. 14. No one belonging to an unauthorized religious community shall be allowed to manage, either directly or through an agent, an educational establishment of any kind, or to teach there.

Offenders shall incur the punishments laid down in Article 8, paragraph 2. Moreover, the closing of the establishment can be pronounced by the sentence of condemnation.

Art. 15. Every religious community must keep an account of its receipts and expenditure; it must draw up every year a statement of its accounts for the past year and a detailed return of its property real and personal.

There must be kept at the head-quarters of the community a complete list of its members, giving their surnames, those by which they are known in the community, their nationality, age, place of birth, and the date of their entry.

The community will be expected to produce, whenever required by the Prefect, before him or his delegate, the accounts, returns, and lists indicated above.

Representatives or directors of a community who furnish false information, or refuse to comply with the demande of the Prefect under the conditions defined in the present Article, shall incur the penalties laid down in paragrah 2 of Article 8.

Art. 16. Every community formed without authorization shall be declared illegal.

Its members shall incur the penalties prescribed in Article 8, paragraph 2.

Founders or administrators shall incur a double penalty.

Art. 17. Shall be null and void all acts inter vivos or testamentary dispositions, with or without liabilities, effected either direct or through an agent or any other indirect channel, which are intended to enable Associations, legally or illegally constituted, to evade the provisions of Articles 2, 6, 9, 11, 13, 14 and 16.

The following shall be presumed by the Law, in the absence of proof to the contrary, to be agents acting in the interests of religious communities:

1. Members to whom sales have been made over, or to whom donations have been given or legacies left, unless, in the case of donations or legacies, the beneficiary inherits in direct line from the donor or testator.

2. A member or company, civil or commercial, composed wholly or in part of members of the community, owning any real property occupied by the Association.

3. The owner of any real property occupied by the Association after it has been declared illegal.

Nullity can be pronounced either at the instance of the Representative of the Government, or at the request of any person interested.

Art. 18. Communities existing at the date of promulgation of the present Law, which have not been previously authorized or recognized, must, within three months, prove that they have taken the necessary steps to conform to its requirements.

Failing this proof, they shall be held to be dissolved as a matter of course. This shall also apply to communities to which authorization has been refused.

The liquidation of the property held by them shall take place judicially. At the request of the Representative of the Government the Tribunal shall appoint a liquidator for the purpose, who shall have, while the liquidation is in progress, all the powers of an administrator in sequestration („administrateur séquestre").

The Order for the liquidation shall be published in the form prescribed for legal notices.

Goods and securities which belonged to the members of the community before their entry into it, or which they have acquired since, either by succession ab intestat in direct or collateral line, or by gift or legacy in direct line, shall be restored to them.

Gifts and legacies which have come to them otherwise than in direct line can likewise be claimed, but it shall be incumbent on the beneficiaries to prove that they were not agents defined in Article 17.

Goods and securities acquired free of liability, and which were not specially assigned by the deed of gift for a work of charity, can be claimed by the donor, his heirs or assigns, or by the heirs or assigns of the testator, and no claim on them can be advanced for the period that may have elapsed before the order pronouncing the liquidation.

If the goods or securities were given or devided, not with the view of benefiting the members of the community, but to be applied to some work of charity, they can only be claimed on the understanding that they shall be used for the accomplishment of the object attached to the gift.

Any measures for recovery or claim must, on pain of foreclosure, be formulated against the liquidator within six months from the publication of the Order. Judgments pronounced after the claimants and the liquidator have been heard, and which have acquired the authority of a final judicial decision, are a bar to all further proceedings.

At the expiration of six months the liquidator shall proceed to dispose by judicial sale of all the real property which has not been claimed, or which was not devoted to a work of charity.

The produce of the sale, as well as all the personal property, shall be deposited in the „Caisse des Dépôts et Consignations".

Until the liquidation is finished, the maintennance of the poor who are being supported in alms-houses, shall be considered as authorized expenses of the liquidation.

If no liquidation arises, or when all the actions brought in the prescribed period shall have been tried, the net assets shall be divided among the parties entitled to them.

The Public Administrative Regulations contemplated in Article 20 of the present Law shall determine, as regards the assets remaining for disposal after the payments provided for above, the allowance in a lump sum or in the form of an annuity, to be assigned to the members of the dissolved community who may have no assured means of subsistence, or who can furnish proof of having contributed towards the acquisition of the sum to be distributed by the produce of their own personal labours.

Art. 19. The provisions of Article 463 of the Penal Code shall be applicable to the offences defined by the present Law.

Art. 20. Public Administrative Regulations shall prescribe the proper measures for securing the execution of the present Law.

Art. 21. The following are abrogated: Articles 291, 292, 293 of the Penal Code, as also the provisions of Article 294 of the same Code relative to Associations; Article 20 of the Order of the 5th—8th July 1820; the Law of the 10th April 1834; Article 13 of the Decree of the 28th July 1848; Article 7 of the Law of the 30th June 1881; the Law of the 14th March 1872; paragraph 2, Article 2, of the Law of the 24th May 1825; the Decree of the 31st January 1852; and generally all provisions contrary to the present Law.

The special Laws relative to professional Syndicates, to Commercial Companies, and to Societies for Mutual Relief are in no way affected as regards the future.

The present Law, discussed and passed by the Senate and the Chamber of Deputies, shall be carried out as a Law of the State.

Done at Paris, the 1st July, 1901

(Signed) *Emile Loubet.*

By the President of the Republic:
The President of the Council, Minister of the Interior
and Public Worship.
(Signed) *Waldeck-Rousseau.*

The President of the Council, Minister of the Interior and Public Worship,

In view of Article 13 of the Law of the 1st July, 1901:

Whereas the Chambers have the sole right of authorizing a community, it is necessary to settle the proofs which are essential for the examination of the requests which will be addressed to the Government for submission to Parliament.

Decrees:

Article 1. The directors or administrators of communities already existing, the founders, in the case of a new community, shall address to the Minister of the Interior the request made with the object of obtaining the authorization contemplated by the above-mentioned Article 13.

Art. 2. They shall annex to this request: (1) two certified copies of the Statutes of the community; (2) a list of its real and personal property as well as of the funds devoted to the institution or to the support of its establishments; (3) a list of all the members of the community, giving their surnames, those under which they are known in the community, their nationality, their age, their birthplace, and, in the case of a community which has already been constituted, the date of their entry.

Art. 3. The Statutes shall make special mention of the object assigned to the community or to its establishments, its head-quarters, and that of the establishments which it may have formed or which it proposes to form, the names of its administrators or directors.

They shall contain the undertaking made by the community and by its members to submit to the jurisdiction of the local Ordinary.

Art. 4. The Statutes should receive the approval of the bishop of any diocese where there is an establishment of the community.

Art. 5. On the production of these proofs the examination of the requests will be proceeded with under the direction of the Minister of the Interior and Public Worship.

Art. 6. A receipt of the documents enumerated in the present Decree shall be handed over at the time of their deposit. It shall fix the date of the accomplishment of the formalities provided for by Article 18, paragraph 1. Modifications in the Statutes proposed in the course of examination shall not entail new requests for authorization.

Art. 7. The Director-General of Public Worship is charged with the execution of the present Decree.

Paris, the 1st July, 1901.

(Signed.) *Waldeck-Rousseau.*

Sir E. Monson to the Marquess of Lansdowne.
(Received October 20.)

(Extract.) Paris, October 18, 1902.

I have the honour to report that the debate in the Chamber of Deputies on the Associations question closed yesterday with a vote of approval of the Government action, which was carried by the large majority of ninety-six.

After the vote had been taken, the President introduced a Bill designed to supplement the Law of the 1st July, 1901, by providing for the punishment of persons opening, directing, or belonging to any unauthorized Congregational Esthablishment. I have the honour to inclose an extract from the „Journal Officiel“, giving the text of this measure.

Inclosure.

Extract from the „Journal Officiel“ of October 18, 1902.
Présentation d'un Projet de Loi.

Article 1er. Seront passibles des peines portées à l'Article 8, paragraphe 2, de la Loi du 1er juillet 1901:

1. Tous individus qui auront ouvert ou dirigé un établissement congréganiste de quelque nature qu'il soit, scolaire ou autre, sans être munis de l'autorisation exigée par l'Article 13, paragraphe 2, de la dite Loi:

2. Tous ceux qui auront continué à faire partie d'un établissement dont la fermeture aura été ordonnée conformément à l'Article 13, paragraphe 3, de la même Loi;

3. Tous ceux qui auront favorisé l'organisation ou le fonctionnement d'un établissement visé par le présent Article.

Art. 2. Les dispositions de l'Article 463 du Codo Pénal sont applicables aux délits prévus par la présente Loi.

Sir E. Monson to the Marquess of Lansdowne.
(Received December 4.)

Paris, December 3, 1902.

My Lord,

A communiqué, published by the „Temps" after yesterday's Cabinet Council, gives some information as to the course which the Government will adopt with regard to the applications of religious congregations for authorization.

The communiqué states that fifty-four applications, of which the Government proposes the rejection, will be submitted to the Chamber; six applications will be submitted to the Senate, of which the Government proposes that five should be granted and one refused.

The fifty-five congregations whose applications are proposed for rejection are classified according to their objects into five categories, and the Government has drawn up one statement for each category giving reasons for proposing the rejection.

The Bills relating to the fifty-four applications submitted to the Chamber were laid yesterday evening, and referred to a Committee.

I have, &c.
(Signed.) *Edmund Monson.*

Sir E. Monson to the Marquess of Lansdowne.
(Received December 4.)

Paris, December 3, 1902.

My Lord,

I mentioned to M. Delcassé this afternoon the situation of the Passionist Fathers, who serve the Church of St. Joseph in Paris; and that of the Benedictines, who conduct the education of seventy-five students (all English) at the English College at Douai. I sketched out the circumstances of each of these cases, pointing out that both the establishments existed solely for the benefit of my countrymen, or for that of English-speaking Catholics.

I said that in each case the ecclesiastics concerned meddled in no way with French people. In that of St. Joseph's Church they were occupied only in the celebration of religious worship, or visiting the sick

and dying. They have no school attached to the Church and do no teaching.

As regards the College at Douai, it is purely an educational establishment where only Englishmen are received. I gave a short history of its existence in France, stating that when re-established in the early years of the last century, an arrangement was made (of an international character, as I believed), in virtue of which the College property was made over to the French Government on condition that a certain annual subsidy was paid by the latter to the former for its support.

I have, &c.
(Signed) *Edmund Monson.*

Sir E. Monson to the Marquess of Lansdowne. — (Received December 13.)

My Lord, Paris, December 12, 1902.

I Asked M. Delcassé, the day before yesterday, what action he had taken in regard to the position of the Passionist Fathers of St. Joseph's Church, in Paris, and the Benedictines of the English College at Douai, whose respective cases I had mentioned to him the previous week, as reported in my despatch of the 3rd instant.

His Excellency said that he had lost no time in communicating the substance of my representations to M. Combes, President of the Council and Minister of the Interior, but that, for the moment, M. Combes had left Paris, and would be absent for some little time. He is one of the series of retiring Senators, and is, of course, a candidate for re-election.

I hope that, as the Chambers do not meet again for the dispatch of business until the 13th January next, it may be possible, during the interval, for M. Combes to take this important matter into his consideration.

I have, &c.
(Signed) *Edmund Monson.*

Sir E. Monson to the Marquess of Lansdowne. (Received January 17.)

(Extract.) Paris, January 16, 1903.

The Committee of the Chamber of Deputies charged with the examination of the Bill on Congregations met the day before yesterday, and after some discussion, voted unanimously the following motion:

„The Committee, being resolved to reject the Petition presented by all the existing congregations which are actually unauthorized, decides that, in accordance with the opinion of the Government, it is expedient to refuse the authorizations solicited by the male congregations in respect of which various draft have been submitted to it.“

The reporter of the Committee is to present his report in a fortnight.

Sir E. Monson to the Marquess of Lansdowne.
(Received January 24.)

(Extract.) Paris, January 23, 1903.

I Have the honour to state that I saw M. Delcassé, who had been ill since the beginning of the year, on the 19th instant, and said that I was very anxious about the position of the British College at Douai, and the Church of St. Joseph in Paris, and asked him whether he had any information to give me in regard to them.

His Excellency said that the question of the authorization of all the congregations, including the two which I had mentioned, was now in the hands of the Legislature and not of the Government.

I replied that I was quite aware of that, but that I still hoped that the Government would and could exercise some influence over their fate.

Sir E. Monson to the Marquess of Lansdowne.
(Received January 29.)

Paris, January 28, 1903.

My Lord,

The question of the suppression of the Benedictine College at Douai and of the Church of the Passionist Fathers in the Avenue Hoche at Paris has caused me so much anxiety that, as it appears to me that the whole series of applications will shortly be taken up, and probably very expeditiously dealt with, in the Chamber of Deputies, I have come to the conclusion that it is urgent for me to take an official step in their behalf by submitting a statement of the merits of their respective cases to the French Government, and calling upon the latter to lay the same before the responsible Committee.

I can, of course, have no certainty that the Government will do as I ask; for, as I have before reported, M. Delcassé has stated to me verbally that the matter is no longer in their hands. Nevertheless, there are, in my opinion, such good grounds for requesting that the Legislature will make an exception in favour of these British institutions, in which considerable British interests are involved, that, as time is short, I have made up my mind to adress to M. Delcassé the note of which the inclosed is a copy, without waiting for the approval which I hope will not be wanting on your Lordship's part.

I have, &c.
(Signed) *Edmund Monson.*

Inclosure.

Sir E. Monson to M. Delcassé.

Paris, January 28, 1903.

M. le Ministre,

In the course of my recent conversations with your Excellency, I have had the honour to express to you the interest felt by His Majesty's

Government in the position of the English religious communities in France, as affected by the new Law of Associations of the 1st July 1901.

Your Excellency is aware that the English Passionist Fathers, of 50, Avenue Hoche, Paris, and the English Benedictines of Douai are among the congregations whose applications for authorization have been submitted by the Ministre of the Interior to the Chamber of Deputies with the recommendation that they should be rejected, and that their applications are at present before a Commission of the Chamber, which has not yet reported on them.

I have already ventured to point out to your Excellency that the Passionist Fathers appear to have a peculiar claim to consideration, because they perform among the English-speaking Roman Catholics of Paris the work which the secular clergy of the city carry on among the rest of their parishioners, and their disappearance would, therefore, be the cause of serious inconvenience to many English people visiting, or living in, this capital. I do not doubt that these facts are known to the Commission of the Chamber, and will be taken into account by that Body in forming their decision.

As regards the English Benedictines of Douai, however, I think it urgent that before the Commission frame their Report, I should call your Excellency's attention to the special position in which the community are placed by the arrangements which the French Government have made in the past with regard to their property. Your Excellency knows that on the outbreak of war between England and France in 1793 the property of the English Benedictines, as of other British subjects in France, was sequestered. The Treaty of Paris of May 1814 (Additional Article IV) provided for the release of such property from sequestration, and in pursuance of this provision it was eventually arranged that the property of the Benedictines remaining unsold should be administered (together with other British ecclesiastical property in France) by the French Government, and the revenues yielded by it should be annually paid over to the Benedictines, and applied to the purposes of Students' Burses. That arrangement continues in force. The property of the Benedictines is held and administered on their behalf by the French Government, and your Excellency will see that it would not be possible to deal with it in the manner ordinarily contemplated by the Law of the 1st July 1901.

The present pecuniary arrangements between the English Roman Catholic Bishops and the French Government are also closely bound up with the existence of the Douai Benedictine College. The Bishops, as your Excellency is aware, receive from the French Government an annual sum reprensenting the revenues of British secular ecclesiastical property in France which was confiscated in 1793, and is now administered on behalf of the Bishops by the State. That sum is applied to the purposes of between twenty and thirty Students' Burses, and the students are at present nominated by the Bishops almost exclusively to the Douai Benedictine College. Should the College cease to exist, the intention of the arrangement could, in practice, no longer be carried out.

Your Excellency will perceive from the foregoing short statement of the facts that the case of the English Benedictines involves important British property interests, calling for special consideration. It appears to me to be very necessary that the facts should be fully known to the Commission of the Chamber which is now examining the community's application for authorization, and in view of the strong interest taken by my Government in the matter, I would venture to impress on your Excellency the urgency of communicating tho the Commission, with as little delay as possible, the substance of the statement which I have had the honour to address to you in the present note.

I have, &c.
(Signed) *Edmund Monson.*

The Marquess of Lansdowne to Sir E. Monson.

Foreign Office, February 2, 1903.

Sir,

I have received your despatch of the 28th ultimo with regard to the question of the suppression of the Benedictine College at Douai, ond of the Church of the Passionist Fathers in the Avenue Hoche, in Paris.

I approve the terms of your Excellency's note to M. Delcassé, submitting a statement of the merits of these respective cases, and urging upon his Excellency the importance of laying the statement before the Commission of the French Chamber of Deputies to which they have been referred.

I am, &c.
(Signed) *Lansdowne.*

Sir E. Monson to the Marquess of Lansdowne.
(Received February 12.)

Paris, February 11, 1903.

My Lord,

I asked M. Delcassé this afternoon whether he could tell me what steps had been taken in regard to the note which I had addressed to him on the 28th ultimo (copy of which was forwarded to your Lordship in my despatch of the 28th ultimo) respecting the cases of the British College of Benedictines at Douai, and the Church of St. Joseph, served by British Passionist Fathers in the Avenue Hoche, in Paris.

His Excellency said that he had at once transmitted it to the Prime Minister, who, in his capacity of Minister of the Interior and of Public Worship, had submitted it to the Parliamentary Committee charged with examining and reporting on the question of the Congregations.

Of course, I must understand that for the present the whole question was in the hands of the Legislature and not of the Government, and, in consequence of the prolonged debates on the Estimates and other urgent

business, it was quite likely that the Congregations' affair would not come on till May, or even June.

It seemed to him quite on the cards that he would himself be called upon to speak upon the cases which I had submitted to him; and upon my saying that in that case I should count upon his employing all his talents as an advocate on behalf of my countrymen, he replied that I might be sure that he would make the best defence of their interests in his power.

I have, &c.
(Signed) *Edmund Monson.*

Sir E. Monson to the Marquess of Lansdowne.
(Received February 13.)

Paris, February 12, 1903.

My Lord,

With reference to my despatch of the 11th instant concerning the English Religious Associations in France, I have the honour transmit herewith copy of a note of the 28th ultimo to M. Combes, and recommended it to his most favourable consideration.

I have, &c.
(Signed) *Edmund Monson.*

M. Delcassé to Sir E. Monson.

Paris, le 7 février, 1903.

M. l'Ambassadeur,

Par une lettre en date du 28 Janvier dernier vous avez bien voulu me signaler l'intérêt que prend le Gouvernement de Sa Majesté Britannique à la situation des établissements religieux Anglais en France qui pourraient être affectés par la Loi sur les Associations du 1er Juillet, 1901.

J'ai l'honneur d'accuser réception à votre Excellence de ce document, que je n'ai pas manqué de porter à la connaissance de M. le Président du Conseil, Ministre de l'Intérieur et des Cultes, en le recommandant à son plus bienveillant intérêt.

Agréez, &c.
(Signé) *Delcassé.*

(Translation.)

Paris, February 7, 1903.

M. l'Ambassadeur,

By a letter dated the 28th January you were good enough to bring to my notice the interest taken by His Britannic Majesty's Government in the position of the British religious establishments in France which might be affected by the Law of Associations of the 1st July, 1901.

I have the honour to acknowledge the receipt of your Excellency's letter, which I did not fail to bring to the notice of the President of the

Council, Minister of the Interior and of Worship, with a recommendation to his most favourable consideration.

Accept, &c.
(Signed) *Delcassé.*

Sir E. Monson to the Marquess of Lansdowne.
(Received February 27.)

(Extract.) Paris, February 26, 1903.

The Report of the Commission of the Chamber of Deputies charged with the examination of the Government Bills dealing with the Petitions of the various religious Congregations was presented to the Chamber yesterday.

It follows the Government division of the Congregations into three categories — those, namely, of the teaching, preaching, and trading religious communities, the latter being concerned exclusively with the Order of the Chartreux.

Among the twenty-four teaching Congregations is included that of the British Benedictines at Douai. It is described as a kind of British seminary, having no relation with the French people, and concerned with the preparation of priests for the English Catholic Missions. I had been given to understand by persons speaking in the name of this Congregation — namely, the Abbot and his Secretary or Chaplain — that its Petition to the Government enjoyed the support of the local authorities. It is, however, stated in the Report that neither the Préfet nor the Municipal Councils of the neighbourhood have pronounced an opinion upon it.

The British Passionist Fathers form one of the list of twenty-eight preaching Congregations. An extract is given from their Statutes, and it is stated that in Paris they preach and receive confessions in English, besides holding a kind of servants' agency.

Sir E. Monson to the Marquess of Lansdowne.
(Received February 28.)

Paris, February 27, 1903.

My Lord,

With reference to my despatch of the 28th ultimo, inclosing copy of a note in which I had called the attention of the French Government to the position of the English religious communities in France, as affected by the new Law of Associations, I have the honour to report that Comte H. de Beaucaire, a Sous-Directeur of the Ministry for Foreign Affairs, called this morning, by direction of M. Delcassé, to acquaint me with the action which had been taken on my note, and to mention one or two pointsas to which further information was desired.

M. Delcassé, he said, had recommended my note to most careful consideration at the hands of the Commission of the Chamber of Deputies on the Congregations, and M. de Beaucaire expressed the hope that the

terms in which the Commission had reported on the British Benedictines of Douai, would be regarded as fair and moderate. The report in question is already in your Lordship's possession. He stated, however, that the search which had been made at the Ministry of Foreign Affairs for some document showing that the above establishment had been recognized by any International Agreement at the time of the restoration of the Monarchy in France had been fruitless. Nor had he been able to ascertain that the French Government had ever had anything to do with transmission of the burses which were sent from time to time to Douai, for the benefit of the students.

Undoubtedly, the Commission would attach great weight to anything which could be produced in the form of a binding Treaty affecting this or any other British religious establishment in France, as well as to any proof that the burses were forwarded by the French Government Agency.

If I had any information to give him on these points, he begged that I would do so, otherwise he feared that there was nothing to differentiate the Douai Congregation from the others, which stood condemned by the Report of the Commission.

I told him that the papers in my possession threw no light on either point, but that I would make inquiry.

I fear it will be useless to ask the Abbot of the Douai Benedictines, who has already furnished all the information he could collect. But your Lordship may think it worth while to have a search made in the archives of the Foreign Office, on the chance that there may be some record of an Agreement between the Governments of France and England bearing on the position of the Order in France. Possibly, also Cardinal Vaughan might be able to throw some light on the manner in which the burses are transmitted.

I can only recommend that, if any information of the kind desired is obtainable, it may be sent me as soon as possible, as the Chamber of Deputies is likely to open its discussion on the Congregations as soon as the Budget has been disposed of.

As regards the Passionist Fathers, Comte de Beaucaire stated that the French Government had every wish to avoid interference with the British Roman Catholic chapel in Paris.

I have, &c.

(Signed) *Edmund Monson.*

Sir E. Monson to the Marquess of Lansdowne.
(Received March 5.)

Paris, March 3, 1903.

My Lord,

With reference to my despatch of the 27th ultimo, I have the honour to transmit to your Lordship herewith a copy of a note which I have received from the French Minister of Foreign Affairs respecting the case

of the English Benedictines at Douai and the Passionist Fathers of 50, Avenue Hoche.

As regards the Passionist Fathers, your Lordship will observe that this note intimates that the work of the Chapel can be carried on by diocesan and secular priests.

I have, &c.

(Signed) *Edmund Monson.*

Inclosure.

M. Delcassé to Sir E. Monson.

Paris, le 27 février, 1903.

M. l'Ambassadeur,

Ainsi que j'ai eu l'honneur de l'écrire à votre Excellence le 7 de ce mois, j'avais transmis à M. le Président du Conseil Ministre de l'Intérieur et des Cultes la communication que vous m'avez adressée le 28 janvier dernier au sujet de la situation de certains établissements religieux Anglais en France.

M. Combes vient de me faire connaître que, conformément au désir que vous aviez exprimé, la lettre de votre Excellence a été transmise à M. le Président de la Commission de la Chambre des Députés, à qui il appartient de se prononcer sur les demandes d'autorisation des congrégations.

M. le Président du Conseil me demande en même temps de vous faire observer que l'existence de la Chapelle Anglaise sise à Paris, 50, Avenue Hoche, n'est liée en aucune façon au sort des religieux non autorisés qui la desservent aujourd'hui, et que l'on peut parfaitement concevoir qu'elle soit desservie par des prêtres diocésans et séculiers. Quant à la Chapelle elle-même, M. Combes ajoute que, bien qu'elle se trouve dans une situation irrégulière au point de vue du concordat, le Gouvernement de la République est disposé à lui continuer la bienveillante tolérance dont elle a joui jusqu'à ce jour.

Agréez, &c.

(Signé) *Delcassé.*

(Translation.)

Paris, February 27, 1903.

M. l'Ambassadeur,

As I already had the honour to inform your Excellency on the 7th instant, I communicated to the President of the Council, Minister of the Interior and of Worship, the letter which you addressed to me on the 28th ultimo, relative to the position of certain British religious establishments in France.

M. Combes has just informed me that he has, in accordance with the desire expressed by your Excellency, forwarded your letter to the President of the Committee of the Chamber of Deputies, charged to pronounce on the applications for authorization by the congregations.

The President of the Council at the same time desires me to point out to you that the existence of the English Chapel of the Avenue Hoche is in no way bound up with the fate of the unauthorized priests who at present perform the services there, and that it is quite conceivable that the services could be performed by diocesan and secular priests. As to the Chapel itself, M. Combes adds that, though from the point of view of the Concordat, its position is irregular, the French Government is disposed to continue towards it the favourable toleration which it has enjoyed up to this day.

Accept, &c.
(Signed) *Delcassé.*

The Marquess of Lansdowne to Sir E. Monson.

Sir Foreign Office, March 16, 1903.

Father Watts-Russell, the Superior of the Passionist Fathers at Paris, called at this Office to-day and inquired whether any light could be thrown on M. Delcassé's note, inclosed in your Excellency's despatch of the 3rd instant, with the terms of which he was acquainted. He stated that the Fathers were ready to become secularized, but it was not clear if they did so that they would be allowed to carry on the ministration of the chapel.

Father Watts-Russell was informed that this doubt had also occured to your Excellency, but that no information had been received to throw light upon the point. The matter was in your hands with instructions to do all you could for the Fathers, and your Excellency would no doubt communicate any further news direct to him, as he was returning to Paris in a day or two.

I am, &c.
(Signed) *Lansdowne.*

Sir E. Monson to the Marquess of Lansdowne.
(Received March 17.)

(Extract.) Paris, March 15, 1903.

Referring to recent correspondence regarding the position of the English Benedictines of Douai, I have the honour to report that some days ago Mr. O'Beirne called, by my direction, at the Ministère des Affaires Étrangères, and had a conversation with Count H. de Beaucaire on this subject.

With regard to the argument (which is put forward in my note to M. Delcassé of the 28th January) that the special arrangements affecting the Benedictines' property were made in pursuance of additional Article IV of the Treaty of Paris, M. de Beaucaire said it would be difficult to sustain this theory in view of certain correspondence which had passed between the two Governments shortly after the Treaty of Paris, in the years 1817 and 1818. The British religious establishments had at that time claimed indemnities for those portions of their property which had

been sequestrated and sold or destroyed, but the French Government had definitely refused to admit that the establishments had any claim unter Article IV of the Treaty, as that Article speaks only of British „subjects“, and not of „establishments“, and even if the word „subjects“ could be taken to cover religious establishments, the establishments in question, which had existed for a great number of years in France, must, the French Government maintained, be considered to be French, and not British. M. de Beaucaire stated that this contention was admitted by the British Ambassador.

M. de Beaucaire strongly recommended that any arguments that could be produced in favour of the Benedictines should be furnished at once in writing to the Minister of Foreign Affairs, with a view to their being before the Commission on Associations of the Chamber of Deputies while the debate on the Congregations was in progress; and Mr. O'Beirne accordingly prepared the Memorandum, of which a copie is inclosed, and which I have forwarded in translation to M. Delcassé.

Inclosure.

Memorandum communicated to M. Delcassé.

The following short statement of facts will, it is believed, be found to show that the English Benedictines of Douai have been accorded by French legislative and administrative Acts of the past 100 years a position altogether different from that of the French religious orders; and that it is impossible to assimilate the case of the Benedictines, and more especially of their property, to that of the French religious communities dealt with by the Law of the 1st July 1901.

When the French religious orders were abolished by the State under the Revolution, certain British, as well as other foreign religious establishments, were exempted from the Law nationalizing ecclesiastical property. The Law of the 7th November 1790, respecting foreign religious establishments founded in France solely for the benefit of foreigners, provided that these were to continue to exist: in the case of secular establishments, under the same régime as before; in the case of regulars they were to continue to exist as seculars, on condition that they conformed with the Decrees of the Assembly on the subject of religious vows. Both seculars and regulars were to remain in enjoyment of their property as before. This Law clearly applies to the Benedictines.

In 1793, on the outbreak of war with England, the property of the English Benedictines, together with that of other British subjects, was sequestrated. A portion of it was sold, and with that we are not at present concerned; the remainder continued under sequestration until subsequent to the Treaty of Amiens (1802). Attention had been called to the matter at the time of the Peace of Amiens, and, after the renewal of hostilities, by the Decrees of 19 Fructidor, an 9, and 28 Floréal, an 13,

it was odered that, in conformity with the Law of the 7th November 1790, cited above, the different English religious establishments should recover possession of all such portions of their property as remained unsold, subject, however, to the superintendence of a Government Board instituted under the name of „Bureau Gratuit". Thus the First Consulate maintained the distinction established under the Revolution between the French religious orders and the British establishments, confirming the latter in the possession of their property.

Under the Restoration, the privileged position of the Benedictines was also respected. Immediately after the Treaty of Paris (May 1814) a Royal Decree, dated the 21st June 1814, confirmed the Decrees of Napoleon above referred to, placing the property of the British establishments under the superintendence of the „Bureau Gratuit". This Decree was followed by a number of other Decrees and Ordinances successively varying the system of administration of property. An Ordinance of the 23rd September 1814, abolished the control exercised by the „Bureau Gratuit" over the properties of the different religious establishments jointly, and ordered the restitution to each establishment of its own property, preserving however, a Central Commission to settle any difficulties that might arise in the repartition. An Ordinance of the 25th January, 1816, supplemented by an Ordinance of the 4th September, 1816, confirmed the Decree of the 23rd September, 1814. An Ordinance of the 17th December, 1818, revived the general administration of the properties by the „Bureau Gratuit." Finally, an Ordinance of the 2nd February, 1826, established the régime which has remained in force down to the present day. Under this Ordinance the property of the Benedictines (as well as that of the English Roman Catholic Bishops) is held and managed by an Administrator appointed by the Minister of the Interior. The net income derived from their property is paid over annually to the Benedictines by the Administrator, and the amount is appropriated to the support of a certain number of students in the Douai College.

It is to be observed that the Treaty of Paris of the 30th May, 1814, safeguards British property in France which had been sequestrated during the previous hostilities by providing (additional Article IV) that the property of British subjects should be released from such sequestration. The Royal Ordinance of the 25th January, 1816, above cited, providing for the restitution to the different religious establishments of their properties severally, refers specifically to this Article of the Treaty. It may be said that the Article in question does not apply to the property of the Benedictines because this had already virtually been restored to them before the Treaty of Paris. But it will not be maintained that the Benedictines are on that account in a worse position than if their property had remained in sequestration down to the time of the Treaty.

The objection has also been raised that additional Article IV of the Treaty of Paris does not apply to the case of the Benedictines because it speaks only of the property of „British subjects", and not of „establish-

ments". The Benedictine property, however, was sequestrated on the outbreak of war with England, not as being religious property, but precisely as being the property of British subjects, and it is extremely difficult to see how it could be argued that it is not covered by the provision of the Treaty safeguarding the property of British subjects.

To resume: The Law of 1890 places the British religous establishments (including the Benedictines) then in France on a totally different footing from te French religious orders. While the latter were dissolved, the former were legislatively authorized, and secured in possession of their property. Their privileges were suspended for a time during the wars with England, but were revived and confirmed under the First Consulate, and again at the time of the Restoration, when a series of Royal Ordinances and Decrees, closing with the Ordinance of 1826, established the régime under which they have remained to the present time. They cannot, therefore, logically or in fairness to them, be dealt with under the Law of the 1st July, 1901, which is designed to meet the case of the French Congregations. Moreover, the property of British subjects sequestrated at the time of the revolutionary wars is safeguarded by the Treaty of Paris; and the Benedictines cannot be held to be in a worse position as regards their property than other British subjects whose interests were protected by the Treaty.

March 11, 1903.

Sir E. Monson to the Marquess of Lansdowne.
(Received March 20.)

(Extract.) Paris, March 19, 1903.

The Chamber of Deputies yesterday decided by a majority of forty-three votes not to pass on to the discussion of the Articles of the Law for the authorization of the twenty-five men's Congregations, classed as teaching Congregations, whose applications were laid before the Chamber by the Government. This vote is equivalent to the rejection of the applications for authorization of all the religious orders concerned, among which, as your Lordship is aware, are included the English Benedictines of Dounai.

The Benedictine application for authorization having thus been rejected by the Chamber of Deputies, the community is now, legally speaking, deemed to be ipso facto dissolved. It remains to be seen whether the Government will show themselves disposed to make any special arrangements with regard to the Benedictines themselves or their property.

The Marquess of Lansdowne to Sir E. Monson.

Sir, Foreign Office, March 20, 1903.

I have received your despatch of the 15th instant in regard to the position of the English Benedictines of Douai, and I have to express my

approval of the terms of the Memorandum which you have presented to M. Delcassé as to the claim of the Order to be treated on a different footing from the French religious orders, and I have communicated a copy of your Excellency's despatch and the inclosure to Cardinal Vaughan.

I am, &c.
(Signed) *Lansdowne.*

Sir E. Monson to the Marquess of Lansdowne.
(Received March 26.)

Paris, March 24, 1903.

My Lord,

With reference to your Lordship's despatch of the 20th instant, I have the honour to inclose copy of a note which I have received from the French Minister for Foreign Affairs, in reply to the Memorandum which I forwarded to his Excellency on the 13th instant, regarding the position of the English Benedictines of Douai.

M. Delcassé, as your Lordshipp will see, does not appear to dispute the statements contained in that Memorandum as to the various special arrangements made by the French Government in regard to the Benedictines and their property during the past hundred years; but his Excellency points out that it was decided by the Commissioners appointed under the Treaty of Paris for the liquidation of claims that the Benedictine establishments in France were French, and not British, establishments, and that this decision was confirmed by the English Privy Council. His Excellency further states that certain correspondence passed between the British Ambassador in Paris and the Minister for Foreign Affaires in 1817 and 1818, relative to the decision of the French Government to place the property of the Benedictines under the control of the Ministry of the Interior, but adds that his Department have not been able to find that any bilateral arrangement was concluded between the two Governments respecting this religious community.

The decision of the Commissioners under the Treaty of Paris to which M. Delcassé refers, confirmed as it is by the English Privy Council, evidently renders it difficult for His Majesty's Government officially to take up the cause of the English Benedictine establishment in France. On the other hand, the British Ambassador appears to have made representations on behalf of the Benedictines in 1817—1818, although not having been able to peruse the corresspondence which passed at that time, I do not know how far the French Government admitted his right to intervene in the matter. It would, no doubt, be of interest to clear up this point.

For the moment it would be, I think, desirable to ascertain what the present intentions of the French Government are with regard to the Benedictines and their property, and I will endeavour to do so in the course of the next few days.

I have, &c.
(For the Ambassador,)
(Signed) *M. de Bunsen.*

Inclosure.

M. Delcassé to Sir E. Monson.

Paris, le 20 Mars, 1903.

M. l'Ambassadeur,

Par une lettre en date du 13 de ce mois, vous avez bien voulu me faire parvenir un aide-mémoire relatif à la situation spéciale des Bénédictins Anglais de Douai. Selon le désir de votre Excellence, je n'ai pas manqué de transmettre ce document à M. le Président du Conseil, Ministre de l' Intérieur et des Cultes.

J'ai d'autre part fait effectuer des recherches dans les archives de mon Département sur la question qui s'y trouve traitée. Ainsi que l'expose cet aide-mémoire, ce n'est pas, comme l'indiquait la lettre de l'Ambassade Britannique en date du 28 janvier dernier, à la suite des Traités de 1814 que le séquestre fut levé sur les établissements religieux Anglais en France; mais, en vertu des Arrêtés des Consuls en date du 19 Fructidor an IX et du Messidor an XI, ces religieux avaient déjà été „définitivement renvoyés dans la propriété de tous leurs biens invendus composant leur dotation."

Après que la paix fut rétablie entre la France et l'Angleterre, les établissements religieux Anglais présentèrent deux sortes de demandes: ils réclamèrent, d'une part, leur autonomie administrative, et, d'autre part, des indemnités pour leurs anciens biens qui avaient été vendus pendant la révolution.

Cette dernière réclamation, présentée par le Directeur du Collège de Douai en conséquence du Traité du 30 mai 1814, a été rejetée par les Commissaires Britanniques eux-mêmes chargés de la liquidation des indemnités de guerre, qui ont considéré le Collège de Douai comme un établissement Français non compris dans les dispositions du Traité. Le réclamant en ayant appelé au Conseil Privé de Sa Majesté Britannique, ce Conseil a confirmé, le 25 novembre 1825 la décision des Commissaires.

L'autre catégorie des réclamations visait le régime des biens non-vendus et restitués aux établissements Anglais, dont l'administration avait été placée sous la tutelle et le contrôle du Ministre de l'Intérieur. Par des lettres en date du 2 novembre 1817, et du 10 janvier 1818, l'Ambassadeur Britannique, Sir Charles Stuart, était intervenu auprès du Ministre des Affaires Étrangères en faveur des établissements qui réclamaient contre l'Ordonnance du 17 septembre 1817. Le Duc de Richelieu lui exposa, dans une communication du 27 mars 1818, les motifs pour lesquels le Gouvernement Français ne croyait pas pouvoir accueillir la demande d'autonomie des établissements religieux Anglais. Sir Charles Stuart répondit au Ministre Français, le 12 avril 1818, et la correspondance Diplomatique semble s'être arrêtée là.

Deux Ordonnances du 17 décembre 1818, et du 2 février 1826, qui ont modifié l'Ordonnance du 17 septembre 1817, dans un sens favorable aux établissements Anglais, ont peut-être été rendues à la suite d'entretiens

officieux entre les Représentants des deux pays; mais les recherches faites dans les archives de mon Département n'ont amené la découverte d'aucun arrangement bilatéral intervenu entre la France et l'Angleterre au sujet des Bénédictins de Douai.

Agréez, &c.
(Signé) *Delcassé.*

Sir E. Monson to the Marquess of Lansdowne.
(Received March 26.)

Paris, March 25, 1903.

My Lord,

With reference to recent correspondence respecting the suppression of the French Religious Communities, I have the honour to report that the Chamber of Deputies yesterday decided by a majority of fifty-four votes not to pass on to the discussion of the Law relative to the authorization of the twenty-eight congregations classed as preaching congregations, whose applications were brought before the House by the Government. The vote is equivalent to the rejection of the applications for authorization presented by the Communities concerned, amongst, which, as your Lordship is aware, are included the English Passionists of No. 50, Avenue Hoche.

I have the honour to inclose an extract from the „Journal Officiel" containing the report of the speech delivered by the President of the Council. Your Lordship will notice that towards the close of his remarks he stated that the immense majority, if not almost the whole, of the congregational establishments would have their „situation liquidated" in the course of the next six months, and that a Return would be presented to the Chamber showing the establishments which it had not been found possible to close, the reasons why they were not closed, and the conditions upon which the closure was delayed.

I hope before long to be in a position to report to your Lordship as to the present intentions of the French Government with regard to the English Passionists.

I have, &c.
(For the Ambassador),
(Signed) *M. de Bunsen.*

Sir E. Monson to the Marquess of Lansdowne.
(Received March 28.)

Paris, March 27, 1903.

My Lord,

I again mentioned the subject of the British Benedictines at Douai, and of the Passionist Fathers at the Church of St. Joseph in Paris, this afternoon to M. Delcassé, expressing my great anxiety in regard to both Communities.

M. Delcassé replied that he hoped that the Passionists would be replaced by secular priests, and that as for the Douai Benedictines the Government had not lost sight of their case, and (his Excellency implied) would do their best for them.

I have, &c.
(Signed) *Edmund Monson.*

Mr. de Bunsen to the Marquess of Lansdowne.
(Received April 3.)

Paris, April 2, 1903.

My Lord,

With reference to Sir E. Monson's despatch of the 27th ultimo, I am informed unofficially by Directeur des Cultes that the Benedictine College at Douai will be sequestered next week and Benedictines expelled.

I will report further by messenger.

I have, &c.
(Signed) *M. de Bunsen.*

Mr. de Bunsen to the Marquess of Lansdowne.
(Received April 4.)

Paris, April 3, 1903.

My Lord;

With reference to my despatch of the 3rd ultimo, I have the honour to state that M. Dumay, the Directeur des Cultes, yesterday informed Mr. O'Beirne that English Passionists of 50, Avenue Hoche, must cease to exist as a religious community, but suggested that a formal application should at once be made by His Majesty's Embassy with a view to the reopening of the chapel under the administration of secular priests.

I have the honour to inclose copy of the note in this sense which I have to day addressed to M. Delcassé, after consultation with Father Watts-Russell, the present Superior of the English Passionists.

I have, &c.
(Signed) *M. de Bunsen.*

Inclosure.

Mr. de Bunsen to M. Delcassé.

Paris, April 3, 1903.

M. le Ministre,

Your Excellency was good enough to address a note on the 27th February last to Sir E. Monson, stating that the President of the Council considered that, whatever decision might be arrived at as to the congregation of English Passionists, of 50, Avenue Hoche, the ministration

of the chapel might continue to be carried on by secular and diocesan priests.

Since then the Chamber of Deputies has refused to grant the application for authorization presented by the Passionist Fathers; and in view of the fact that the community is thus legally dissolved, I beg to submit to your Excellency an application which I have received from certain English Roman Catholic priests named below, who are secular priests under the jurisdiction of the Roman Catholic Bishop of Liverpool, Dr. Whiteside, holding faculties from his Eminence the Cardinal Archbishop of Paris, and who desire permission to reopen the chapel at 50, Avenue Hoche.

I have the honour to recommend their application strongly to the acceptance of the Government of the Republic; and, in doing so, I would venture to remind your Excellency of the great inconvenience that would be caused to the English-speaking Roman Catholic residents of Paris by the closing of this chapel.

I have, &c.

(Signed) *M. de Bunsen.*

Mr. de Bunsen to the Marquess of Lansdowne.
(Received April 4).

My Lord, Paris, April 3, 1903.

With reference to my despatch of yesterday, I have the honour to state that Mr. O'Beirne called yesterday morning on M. Dumay, the Directeur des Cultes, with a view to ascertaining what the intentions of the French Government were with regard to the Benedictines at Douai. He was informed that the Law must be enforced against them exactly as in the case of French communities; that it was impossible to make an exception in their favour; and that a liquidator would proceed to the sequestration of their goods in the course of next week. As regards the question of property, M. Dumay expressed the opinion that none of the immovable property forming part of the „Fondations Anglaises" would be affected by the liquidation, which would take place under Article 18 of the Law of the 1st July, 1901; but in answer to Mr. O'Beirne's inquiry whether the administration of the „Fondations Anglaises" would continue to pay to the Benedictines, when they had removed to England, the revenues properly accruing to them, he said he was not competent to state what arrangements would be made.

I at once telegraphed this information to the Douai College, and this morning Father Kelly, the Prior, came to Paris and informed me that, immediately after he had received my telegram yesterday afternoon, the liquidator and a Juge de Paix had presented themselves at the Douai College with a view to proceeding with the sequestration.

The Benedictines' lawyer had, however, induced them to delay operations until to-morrow, on the ground that certain legal formalities had not been fulfilled.

Father Kelly asked for the intervention of the Embassy to secure, if possible, some delay in the execution of the Law, in order that time might be afforded to the community to withdraw their personal effects, including the library and other property of the establishment.

I told him that if the representatives of the Ministry of Justice had indeed taken the matter already in hand, I felt very doubtful of my power to obtain any mitigation of their action, I promised, however, to inform the French Foreign Office of what had happened, and to ask if nothing could be done to stay proceedings, at least for a time.

I accordingly saw Cogordan, Director of the Political Department, and, while disclaiming any desire to withdraw the Benedictines from the operation of the Law, I reminded him that M. Delcassé had held language to his Excellency, since the Law was voted, which appeared to hold out a hope that something might be done to render the application of the Law as little irksome as possible. This expectation had not been realized. On the contrary, it would appear as if the community in question was to be one of the first to feel the full rigour of the Law. I did not think this could be the intention of the French Government, and I begged M. Cogordan to bring the matter immediately to M. Delcassé's attention.

He promised to do so, but added that, personally, he could not see what his Excellency could do to arrest by administrative means a judicial operation sanctioned by a vote of the Chamber of Deputies

I have, &c.
(Signed.) *M. de Bunsen.*

Rev. F. A. Gasquet to the Marquess of Lansdowne.
(Received April 21.)

Collège Anglais, Douai, France,
April 19, 1903.

My Lord,

An absence of some three weeks out of the reach of letters has kept me in ignorance of what had taken place in regard to our English Benedictine College at Douai during that time. We had been repeatedly assured by the authorities of this city, including the Mayor and the Deputy, that the Laws lately passed in regard to the French Religious Corporations would not be found to touch our establishment here, since it was entirely an English house. Beyond this, our English Ambassador in Paris declared most positively that even if our college should be closed by any application of the Laws, nothing in the way of confiscation of goods nor of taking possession of movables with a view to a compulsory sale would, in our case, be possible, as we were protected as British subjects. I was, therefore, astonished to find, on my arrival here yesterday, that not only had the formal Decree, closing our establishment within three months, been received, but that „a liquidator“ had been appointed and was already at work. Our goods had been sequestered, and he was actually engaged in compiling an inventory with a view to their being sold.

I am informed that the reason assigned by the Embassy in Paris for not extending to us the protection we supposed we had a right to as British subjects is that the decision of the Privy Council of 1825 proves that our establishment here is French. I hasten to forward to your Lordship a Memorandum on this decision, which I hope will convince you that it has nothing to do with the present question, and does not even refer to the same property.

I desire also to protest against the house being considered in any way French, and to the indignity of having our goods and belongings seized by French officials, as if we were not British subjects.

I am, &c.

(Signed) *Francis A. Gasquet*, Abbot.
President of the English Benedictines.

Inclosure.

Memorandum on the Decision of the Privy Council, November 25, 1825, rejecting the Claims of the English Collegiate Establishments to Compensation for loss of Property and Funds in the French Revolution out of the Funds handed over to the British Government to meet the Legal Claims of English Subjects.

The Privy Council judgment delivered by Lord Gifford on the 25th Novemher, 1825, had no reference whatever to the existing establishment at Douai.

2. It was in no sense any engagement or convention with the French Government, which had nothing to say to the case thus decided, and which had been no party to the decision of the English Commissions appealed against.

3. The circumstances under which the Privy Council judgment was given were the following:

a) The English Catholic colleges, &c., which had existed in France for some centuries before the French Revolution admittedly suffered great losses of real estate and funded property during the troubles.

b) The Representatives of these establishments put in their claims to be compensated for these losses out of the sum of money placed by the French in the hands of the British Government, for distribution among English claimants whose property had been destroyed or otherwise confiscated in the Revolution.

c) At the date of the Privy Council decision on the Catholic claims in 1825, these Catholic establishments were undoubtedly illegal, according to the then English law; they had not been carried on with the sanction of the British Government, and the purposes for which the funds claimed had existed were held to be „superstitious“ by the then law of England.

d) On these grounds the Commissioners appointed to adjudicate upon the English claims held that the Catholic claims could not be considered

as coming within the terms of their Commission, and as such establishments were unknown to the English law they must, in the legal sense, be held to have been French, and consequently could not have any right to a share in the distribution of funds intended for the compensation of English interest which had been injured.

e) On appeal by the representatives of the Catholic establishments against this decision, the Privy Council upheld this technical objection, which it may be admitted, in the then state of the law, appears to have been fatal to the Catholic claims. In Lord Gifford's Privy Council Judgment, delivered on the 25th November, 1825, the following reasons are stated for the conclusion arrived at: „Although the members (of the Catholic establishments) were British subjects" — „the end and object were not authorized, but were directly opposed to British law, and the funds dedicated to their maintenance were employed for that purpose in France, because they could not be so employed in England." In law consequently „we think, therefore, that they must be deemed French establishments."

4. The Catholic Emancipation Act of 1829 removed the illegality of the position of English Catholic colleges and establishments. The chief ground of the Privy Council decision of 1825 is consequently removed.

5. Further, this decision of the Privy Council was not concerned with anything beyond the claim of the Catholic establishments to a share in the compensation awarded for other English interests, which had been injured by the Revolution. It had no reference to the existing college of St. Edmund at Douai, nor to the revenues derived from the „Fondations Anglaises" property.

I submit, therefore, that Lord Gifford's opinion that the Catholic colleges, &c., „must be deemed French establishments" has no force in existing circumstances, and has no reference to the special case of St. Edmunds, Douai, which has always been regarded and treated as a British establishment, and the Superiors of which would never have consented to remain in France and to build up the large existing establishment except as British subjects. During the entire long period of their existence in the last century and until the present moment, although the Superiors have had constant business communications with the French Government, there has never been any suggestion made that the English College at Douai was not, as it claims emphatically to be, a British establishment, though locally situated for business purposes on French soil.

Moreover, when the „Fondations Anglaises" trust was established, it was expressly declared that the fund was created out of British property, and a most careful distinction was drawn between what was undoubtedly British, and what was presumably French, as having before the Revolution belonged to one or other of the dissolved French congregations. Thus, the Benedictine claim to the church adjoining their monastery at Douai was finally, and after a long process, rejected on the ground that, as it was used also by the Arras monks, it must be considered to have be-

longed to that French Abbey, whilst our claim to the present college building was admitted, and allowed to be British property, and now forms part of the „Fondations Anglaises". In the same way much of the property of the Benedictine house in Paris was claimed by the then Government as having been French monastic property, whilst the monastery itself in Paris was admitted to be English, and still remains in the trust administered by the French Government as British property. These facts prove absolutely that the French Government from the first never regarded this restored property as being other than „British."

6. That the English Government has always regarded our establishment at Douai as British needs no proof. Our Congregation has furnished many English bishops to Australia and the Mauritius, and in the late war supplied many military chaplains to the army in the field. We have never received any intimation that our house at Donai was to be regarded as being other than what it is acknowledged to be by our Ecclesiastical authorities, a house of „the English Congregation of the Order of St. Benedict."

We consequently protest against our Douai establishment being considered in any way French. It is British in every sense of the word. It has no French subjects; it is not supported by French money; it educates no French students; and it is under no French authority, except in so far as every such establishment is bound to the ordinary law of the land. We consequently claim for it that protection which England has been accustomed to accord to every English establishment or place of business, or even individual, in any part of the world, and feel confident that our rights will be protected by our British Government.

(Signed) *Francis A. Gasquet*, Abbot,
President of the English Congregation of the Benedictine Order.

Collège Anglais, Douai, April 19, 1903.

Sir E. Monson to the Marquess of Lansdowne.
(Received April 23)

Paris, April 22, 1903,

My Lord.

With reference to recent correspondence regarding the position of the English Benedictines at Douai, I have the honour to inclose a copy of a letter from the Rev. W. E. Kelly, Prior of the Douai Benedictines, protesting against the view that the decision of the English Privy Council in 1825, to the effect that the Benedictine College could not be considered to be an English establishment, still applies to their case.

I should explain that in one of his conversations with Mr. O'Beirne, Father Kelly had suggested that His Majesty's Government should address a formal remonstrance to the French Government against any portion of

the Benedictines' property being dealt with under the Law of the 1st July, 1901; and Mr. O'Beirne then drew his attention to the difficulty which the decision of the Privy Council would place in the way of such action.

I have, &c.

(Signed) *Edmund Monson.*

Inclosure.

Rev. W. E. Kelly to Sir E. Monson.

Collège Anglais, April 18, 1903.

Dear Sir,

Since last writing to you I have seen Abbot Gasquet, who has but lately returned from abroad.

I put before him the 1825 Declaration of the Privy Council, by which you say your hands are tied, and you are prevented from making any formal protest in our behalf.

His answer is that the said Declaration has nothig whatever to do with the present case. It was merely giving a decision on a point of English law, as applied to an isolated case, viz., the distribution of a particular sum of money which had been handed over to the English by the French Government, in compensation for properties confiscated during the Revolution. It was not an international Agreement in any sense — the French Government was not concerned in the matter. Chatholic emancipation removed the ground of the decision. The action of the two Governments has always hitherto been such as to mark us off as distinetly British subjects.

With all due respect, therefore, we venture to protest against the present application of the 1825 decision. We still maintain that we are to be considered not as a French but a British establishment, and we still look to England to acknowledge us as such. Abbot Gasquet has kindly undertaken to write to Lord Lansdowne on this subject.

(Signed) *W. E. Kelly.*

Sir E. Monson to the Marquess of Lansdowne.
(Received April 23.)

Paris, April 22, 1903.

My Lord,

Having been confined to the house by indisposition, I asked the Prime Minister to be so good as to pay me a visit on the 18th instant, in order that I might say a word to him on the subject of the position of the Church of St. Joseph, Avenue Hoche, and on that of the Benedictine College at Douai.

M. Combes kindly came to see me late that evening, and, in answer to my explanation of the motives for which I had desired to see him,

he said that he saw no reason why there should be any apprehension on the part of those who are connected with St. Joseph's Church, either as priests in charge or as holding a financial interest in the property. The services being now in the hands of secular priests, the condition required had been complied with.

As regards the college at Douai, M. Combes said that he did not see how it would be possible to avert the expulsion of the Benedictines, and he entirely rejected the argument which I advanced as to their rights under the „Fondations Anglaises". To my suggestion that the college might be carried on under secular priests, he replied that he doubted this being possible; but that he had never examined this solution, and would do so, and give me his opinion in a week's time.

I have, &c.
(Signed) *Edmund Monson.*

Foreign Office to Rev. F. A. Gasquet.

Foreign Office, May 2, 1903.

Reverend Sir,

I am directed by the Marquess of Lansdowne to acknowlege the receipt of your letter of the 19th ultimo on the subject of the closing of the establishment of the English Benedictines at Douai in accordance with the law lately passed in regard to French Religious Corporations.

I am to inform you that the Benedictine College at Douai, being situate in France is governed by the law of that country and not by the law of England.

His Majesty's Ambassador at Paris took every step which was possible in the interests of the English religious bodies in France during the consideration of the Associations Bill in the Chamber of Deputies, but it is beyond the power of His Majesty's Government to interfere to protect the community at Douai from the operation of the law of the country in which their establishments is situated.

I am, &c.
(Signed) *T. H. Sanderson.*

Rev. F. A. Gasquet to the Marquess of Lansdowne.
(Received May 5.)

4, Great Ormond Street, London, May 5, 1903.

My Lord,

I beg to acknowledge the receipt of your Lordship's letter of the 2nd May. From it I gather that you must have mistaken the purport of my previous communication addressed to you from Douai. I made no appeal to you to use the authority of the English Government to obtain permission for the English Benedictines to remain in France, in opposition

to the Law closing similar establishments. My appeal was to our Government to protect our property—which is undoubted English—from confiscation at the hands of the French. This is not only threatened, but has already been initiated by the appointment of a liquidator.

I shall be glad if your Lordship will accord me an interview on this pressing matter at any time convenient to you. I can explain the matter verbally better than by letter, and could answer any questions about the statuts of our college and property. I cannot conceive that, if the facts were known, our Ambassador in Paris would sacrifice such large English interests without at least some serious attempts to save them.

Meanwhile, I beg to inclose, for your Lordship's information, a printed statement of facts in regard to the ownership of our property in France. This, I hope, will be sufficient to convince that the French Government has always, up to the present, acknowledged the property in question as British.

I am, &c.

(Signed) *Francis A. Gasquet*, Abbot,
President of the English Benedictines.

The Marquess of Lansdowne to Sir E. Monson.

Foreign Office, May 6, 1903.

Sir,

I have received your despatch of the 22nd ultimo, inclosing copy of a letter from the Rev. W. E. Kelly protesting against the view that the decision of the English Privy Council in 1825 still applies to the case of the English Benedictines at Douai.

I would observe that the decisions of the English Privy Council have neither validity nor binding force in an alien jurisdiction, and that, consequently, the present matter is in no way affected by the Judgment of that body in 1825.

As I have pointed out to the Rev. Abbé Gasquet, the establishment of the Benedictine College at Douai, being situate in France, is governed by the law of France, whatever that law may be, and not by the law of England.

I inclose, for your Excellency's information, copies of the letter which I have received from the Abbé Gasquet and of my reply.

I am, &c.

(Signed) *Lansdowne.*

Foreign Office to Rev. F. A. Gasquet.

Foreign Office, May 8, 1903,

Reverend Sir,

I am directed by the Marquess of Lansdowne to acknowledge the receipt of your letter of the 5th instant in regard to the property of the English Benedictines at Douai.

I am to inform you, in reply, that his Lordship is advised that, although the individual members of the Confraternity of the Benedictines at Douai may be British subjects, the community cannot be exempt from the general principle that persons who voluntarily settle in another country submit themselves to the law of that country. There is in these circumstances nothing in the execution of the present law to which His Majesty's Government can take exception.

His Majesty's Ambassador at Paris is fully aware of the circumstances of the case, and has done what is possible to obtain considerate treatment for the English Benedictines, but His Majesty's Government have no locus standi for further intervention. The points raised in your letter will, however, be carefully examined in consultation with Sir E. Monson and the Law Officers of the Crown.

I am to add that as Lord Lansdowne has had several interviews with Cardinal Vaughan with regard to this question, his Lordship does not think that, for the present at any rate, there would be any advantage in troubling you to call.

I am, &c.
(Signed) *T. H. Sanderson.*

Foreign Office to Rev. F. A. Gasquet.

Foreign Office, June 11, 1903.

Reverend Sir,

With reference to the letter from this Office of the 8th ultimo, in regard to the closing of the establishment of the English Benedictines at Douai, I am directed by the Marquess of Lansdowne to inform you that the various points raised in your letter of the 5th May have been carefully considered by His Majesty's Government, in consultation with the Law Officers of the Crown, with the result that his Lordship finds himself unable to add anything to the views already expressed on the matter in the letters addressed to you on the 2nd and 8th May last.

I am, &c.
(Signed) *T. H. Sanderson.*

Rev. F. A. Gasquet to Foreign Office. — (Received June 15).

Sir, 4, Great Ormond Street, W.C., June 13, 1903.

I Beg to acknowledge the receipt of your communication of the 11th instant. You refer me to the Marquess of Lansdowne's letters of May 2nd and 8th last, and say that „his Lordship finds himself unable to add anything to the views already expressed on the matter“ in those letters. I have looked at these letters again, and can find no expression of opinion on the matter I had raised in either of them. They expressly deal with the question of closing the establishment at Douai. As to this, beyond good offices in trying to obtain exemption, it would of course have been

impossible for His Majesty's Government to interfere. The question that I raised was, however, a different one. I asked for the support of the Foreign Office for a claim for compensation for manifest confiscation of British property. It is not a case of law, for as I understand, no compensation claimed by one civilized nation from another for injury done to property ever is. The question is one of diplomatic representation and international equity. Even after the great French Revolution compensation for similar injury to precisely the same kind of property was admitted by the French Government. It is true that we did not receive the money paid over to the English Government of the time, but the French admitted the claim, and this was not disputed by the English Government.

I should be glad to know whether His Majesty's Government now propose in no way to assist us as British subjects to obtain compensation for the confiscation of our property.

(Signed) *Francis A. Gasquet*, Abbot,
President of the English Benedictines.

Foreign Office to Rev. F. A. Gasquet.

Foreign Office, June 20, 1903.

Reverend Sir,

I am directed by the Marquess of Lansdowne to acknowledge the receipt of your letter of the 13th instant in regard to the question of compensation for the confiscation of the property of the English Benedictines at Douai.

In reply I am to point out that in the letter addressed to you from this office on the 8th of May, it was stated that His Majesty's Government have no locus standi for further intervention on behalf of the community beyond the efforts already made to secure for it considerate treatment.

This statement obviously indicates that His Majesty's Government are unable to give official support by diplomatic means to a claim for compensation.

I am, &c.
(Signed) *T. H. Sanderson.*

Public Protest by the Douai Society, (Received July 21.)

The Douai Society hereby records its indignant protest at the infamous conduct of the French Government in its wholesale robbery and expulsion of the English Benedictines of Douai. These Benedictine Fathers are British subjects; their students are British subjects; they took no part in national or municipal politics; they have never been accused of breaking any law; their legal petition for authorization was absolutely rejected without any examination, and, finally, all their Monastic and College property at Douai has been seized and confiscated in spite of the

indisputable fact that, up to the very day of spoliation, all this property has been regarded by French law as British and Benedictine. Furthermore, the Douai Society begs to point out that the country house of the College at Planques, near Douai, is not the property of the English Benedictines. It is not ecclesiastical or religious property at all. It is owned by the Douai Society, whose members all live in England, and the house and estate were merely placed at the disposal of the College and students. The undersigned members of the Douai Society, in forwarding the above protest to the Foreign Office, to the Houses of Parliament, to the public press, and to publicists of all shades of opinion generally, express the fervent hope that British public opinion will speak out, and will never tolerate any weak acquiescence on the part of the British Government in such a wanton act of spoliation and injustice towards subjects of the British Crown.

(Signed on behalf of the Douai Society.)

Sir E. Monson to the Marquess of Lansdowne.
(Received July 30.)

My Lord, Paris, July 29, 1903.

I have the honour to acknowledge the receipt of your Lordship's despatch of the 24th instant, inclosing a copy of the public protest issued by the Douai Society against the treatment which the English Benedictines of Douai have received at the hands of the French Government.

This protest, so far as my information goes, is not accurate in stating that the whole of the Benedictines' Monastic and College property at Douai has been seized and confiscated. From inquiries which I have caused to be made from the Abbé Jouannin, „Administrateur Temporaire des Fondations Anglaises", I learn that the operations of the liquidator appointed by the Douai Courts under Article 18 of the Associations Law have affected only the Benedictine Fathers' movable property. The value of that property is something between 1,000*l.* and 1,500*l.*; but the Fathers left certain accounts with local tradesmen unsettled; and it is not anticipated that the proceeds of the sale will go much beyond covering the amount of the debt.

As regards the real property formerly in the possession of the English Benedictines in France, including the Monastery and College at Douai, your Lordship is aware that it is held and administered by the „Bureau des Fondations Anglaises", an office depending upon the French Administration, the Benedictines occupying the Douai property in the capacity of lessees. The Law of Associations does not appear to be applicable to this property, or to affect any portion of it; and I am informed that the liquidator has made no attempt to touch it. M. Jouannin had not heard of the liquidator having seized the house at Planques, as the protest implies; but should he have done so the Douai Society, as the real owner, could enter effective opposition to such action before the Courts.

The Abbé Jouannin informed Mr. O'Beirne, Second Secretary at this Embassy, that the Bureau des Fondations Anglaises was prepared to continue to pay over to the Benedictines the amount of the Bourses (representing the proceeds of the Benedictine property) which have been hitherto allotted to them, provided that such Bourses are applied as heretofore to the support of students in France. If the Benedictines did not nominate to Bursaries in France the Bureau considered itself precluded by the nature of the Fondations Anglaises from paying over the amount of the Bourses, but that amount would be allowed to accumulate to the credit of the English Order.

As a possible solution of the difficulty arising from the expulsion of the Benedictines from France, M. Jouannin suggested that it might be practicable for them to transfer their Bourses to the English Bishops, who could send students to France to such Seminaries as St. Sulpice, or who might even, M. Jouannin thought, arrange to open a Seminary conducted by secular priests at the Old Benedictine College at Douai. I am not in a position to judge how far these suggestions are practicable, but M. Jouannin's statements seem to me to be of some importance as indicating that the French Administration have no desire to alter the status of the real property formerly possessed by the English Benedictines in France, and are perfectly willing that the Benedictines should continue to derive profit from the proceeds of that property, provided that an arrangement can be made by which they will do so without altering the constitution of the Fondations Anglaises.

I have, &c.
(Signed) *Edmund Monson.*

Sir E. Monson to the Marquess of Lansdowne.
(Received August 5.)

Paris, August 4, 1903.

My Lord,

Although the formalities connected with the authorization of religious services at the English Roman Catholic Chapel at 50, Avenue Hoche, under the ministration of English secular priests, have not yet been altogether completed, it may be well, in view of the publication af a Blue Book on the subject of the expulsion of English religious congregations from France, to state what is the present position of this matter.

On the 3rd April last, His Majesty's Minister submitted to the French Government, with a strong recommendation, an application from certain secular priests under the jurisdiction of the Roman Catholic Bishop of Liverpool, holding faculties from the Cardinal Archbishop of Paris, for permission to reopen the chapel about to be vacated by the Passionist Fathers. Upon the departure of the former incumbents, the priests, whose names had been given to the French Government, at once took over charge of the chapel. It was intimated to them by the French authorities that before their application could be definitely granted, there were different

particulars to be furnished to the Government, and certain formalities to be fulfilled; but in the meantime they were given a provisional licence to carry on the services, and arrangements were made, through the good-will and courtesy of the authorities, whereby an interval of only part of a day elapsed between the formal closing of the old Passionist Chapel and its reopening under the ministration of secular priests.

The Principal of these priests, Father McMullen, has been in communication with the Direction des Cultes, and has furnished that Department, through the intermediary of the Embassy, with information on certain points indicated by the French Government; and I have no reason to anticipate that there will be any difficulty in the way of formal authorization for the conduct of religious services in the chapel being granted in due course.

I have, &c.

(Signed) *Edmund Monson.*

Appendix.

Sir C. Stuart to the Duke de Richelieu.

Sir, Paris, November 2, 1817.

Though a total silence upon the subject of the letter I had the honour to address your Excellency, by direction of His Majesty's Government, claiming the restoration of certain property belonging to the English Benedictines' establishment in France would almost induce me to doubt if that claim has ever come to your Excellency's knowledge, the unfavourable result of my representation cannot prevent the execution of a duty which compels me to call the attention of your Excellency to a Regulation of which this same class of persons have reason to complain.

The most serious inconvenience is likely to result from the amalgamation of the funds belonging to the Irish and Scotch Catholic foundations in France with the money which not only support the English establishments in the same country, but the Catholic laity and clergy in England, since the experience of the last twelve years has shown that this measure not only facilitates the appropriation of the latter fund to objects wholly foreign to the purposes of their foundation, but has actually created a debt charged upon their property which they are quite unable to pay.

The Ordonnance of the 17th September, 1817, having revived this system, I have received the representation on the part of the English Catholic clergy from Dr. Poynter, the Roman Catholic Bishop of London, which I have the honour to inclose, stating with precision the origin and object of each establishment and explaining the embarrassments to which this Regulation is likely to give rise; and after your Excellency has taken cognizance of the facts contained in that paper, I am to hope that it will be thought expedient to receive His Most Christian Majesty's orders for suspending a Regulation so directly at variance with the ancient practice, and so prejudicial to the interests of a community the French Government profess to protect.

I have, &c.

(Signed) *C. Stuart.*

Inclosure.

Dr. Poynter to Sir C. Stuart.

On the subject and consequences of the Ordonnance of the 17th September, 1817, of which Dr. Poynter had the honour to deliver a copy to Sir Charles Stuart, particularly inasmuch as this Ordonnance affects the interests of the English Secular College at Douai, and the English Seminary at Paris, in both which the Catholic Bishops and Superiors of the Mission in England are deeply concerned, Dr. Poynter respectfully begs leave to observe to his Excellency

1. That these two establishments at Douai and Paris, with all the houses, lands, funded property in France, and goods of every description belonging to them, were purchased with British money, and are the property of British subjects.

2. That the English Secular College at Douai was established in 1568 under Philip II of Spain.

That in mere spiritual matters it was subject to the jurisdiction of the Bishop of the Diocese.

That as to its interior and temporal government and administration it was never, from its first foundation still the Revolution in France, subject to any other superintendence or control than to that of the Superiors of the English Catholic Mission, who having principally endowed it and supplied it with the means of educating English Catholic clergy for the Mission (or Church) in England over which they preside, have from the beginning been in the acknowledged possession of nominating their own Administrator, the President of their College, and of demanding of him an account of the whole of his administration.

That of the moneys in the French funds standing in the name of the President of the English Secular College of Douai, a considerable part belongs to the Catholic Bishops in England, particularly to the Catholic Bishop in London, for the use and support of the Mission there, which moneys were placed by these Bishops, or their predecessors in the French funds — for greater convenience at the time — in the name of the President of the College of Douai. The same observation applies also to a part of the funded property in Paris standing in the name of the Superior of the English Seminary, Rue des Postes.

That the Superiors of the Catholic Mission in England and the Presidents of the Secular College at Douai have been in uninterrupted exercise of the superintendence and of the interior temporal administration of this College (uncontrolled by any French Board of Superintendence or Administration) during a space of more than two hundred years, under protection of the predecessors of happy memory of His present Most Christian Majesty Louis XVIII. For that protection the Catholic Mission in England will be ever grateful.

3. That the English Seminary at Paris was purchased and endowed with money the property of British subjects. The presentation of the

Superior of this Seminary was always in the Senior Catholic Bishop in England and the nomination in the Archbishop of Paris. But it was to the President of the English College at Douai that the Superior of this Seminary submitted the statement of his accounts.

4. That the English College at St. Omer also was built with English money, and is British property.

5. That these English establishments were all protected by the Kings of France to the period of the Revolution in 1789 in the enjoyment and administration of their own property and in their internal government, according to their respective constitutions.

6. That at the suppression of communities, religious orders, and other similar French establishments in the country, the National Assembly, by a Law passed on the 7th November, 1790, acknowledged the right of property in these foreign establishments, and secured them to their possessors.

That by other Laws passed on the 8th and 12th March, 1793, the Superiors of the English houses were confirmed in their possessions and in their right to receive the dividends on the property belonging to their establishments in the public funds of France.

So far were the rights of property belonging to British ecclesiastical establishments in France, and acquired with British money, respected at a time when every French establishment of the nature was seized and employed as national property.

7. That the three English establishments of Douai, Paris, and St. Omer, have no connection with the Scotch or Irish Colleges or Seminaries in France.

8. That Bonaparte uniting these English establishments to those of the Scotch and Irish in open violation of the rights of the respective proprietors, founders, and superiors of these English houses, formed a new mode of administration for this his united establishment, and subjected it to a Board Superintendence (Bureau de Surveillance) by a Decree of 28 Floréal, an 13 (1805).

9. That the Catholic Bishops of Great Britain and Ireland protested against this usurpation and confusion of their rights and property, and demanded justice.

10. That at the happy news of the return of Louis XVIII to France they flattered themselves that this system of the usurper by which they had been so materially injured would be dissolved, and that the separate and distinct enjoyment and free administration, as before, of what remained of the property belonging not to France, but to their respective establishments and to their Churches and Missions in Great Britain and in Ireland, would be restored; but—

11. That after the return of His Most Christiau Majesty Louis XVIII, in the month of May 1814, to their astonishment and grief the signature of the King was obtained to an Ordonnance, dated the 21st June, 1814, confirming that Decree of Bonaparte of 28 Floréal, an 13, and naming

Mr. Feris Administrator-General of all the British and Irish Colleges and Seminaries.

12. That on the 30th October, 1815, the signature of His Majesty was also obtained to another Ordonnance, which in the terms of that of the 21st June, 1814, forms a „Bureau Gratuit de Surveillance Générale", which, contrary to the intentions of His Most Christian Majesty, continued the same system of confusion of property, and of the violation of the rights of the Superiors of the English establishments, who were then living and had been at the head of their respective Colleges and Seminaires when the French Revolution began.

13. That this system of subjecting these English establishments to a Bureau de Surveillance is not agreeable to any law in France affecting English property or English establishments; that it is contrary to the form of international government and administration of which these establishments were in full possession under the protection of the Kings of France before the period of the Revolution; that it appears to be contrary to the principles of property acknowledged in the beginning of the Revolution in the exemption of foreign ecclesiastical establishments from the effects of the laws in general regarding domestic and national establishments of the nature; that it was only introduced by Bonaparte for the government of his new formed united establishment of the colleges and seminaries of the three nations, consequently the unjust union being dissolved, it appears just that the seperate establishments should be administered as formerly.

14. That the effect of this administration of the Bureau de Surveillance has been nothing less than the alienation and spoliation of the property destined for the education of English Catholic clergy, and for the use and support of the Mission (or Catholic Church) in England; that when in virtue of an Ordonnance of the King, dated the 25th January, 1816, Mr. Ferris was removed from the office of Administrator-General, it appeared that after having received the rents and other property belonging to the three establishments of Douai, Paris, and St. Omer, for several years, and having spent them on objects foreign to their destination, he left a debt charged on these three establisments to the amount of more than 20,000 fr., which the Superiors of these houses are now compelled to pay.

15. That by the late Ordonnance of the 17th September, 1817, this same Bureau de surveillance is brought into activity, is authorized to take from the Administrators of these English establishments the property they hold (which they consider to be nothing less than confiscation or sequestration) with a threat, that these Administrators shall be suspended from their functions, be removed from their situations and be replaced by others, if they do not punctually comply with the terms of this Ordonnance, which would be the complete subversion of the rights and alienation of the property of the Superiors of the Catholic Mission (or Church) in England, not for the benefit of the French Government, but of interested individuals.

16. That the news of such an Ordonnance has filled the Catholic Bishops in England with astonishment and the deepest concern, and that

the Rev. Dr. Poynter, Bishop and Vicar Apostolic in London, has come to Paris as their authorized deputy to protest, with the most profound respect for His Most Christian Majesty and for his Government, against this Ordonnance of the 17th September, 1817, and against all interference of the Bureau Gratuit in the administration or in any of the concerns of the English establishments, most particularly in those of Douai and Paris, and to ask in the names of all the Superiors of the Catholic Mission in England, that these two establishments of Douai and Paris in particular, as well as that of St. Omer, may be placed on the same footing as they were previously to the Revolution in 1789, and that all Acts, Decrees, Arrêtés, and Ordonnances contrary thereto, especially the Decrees of the 26 Vendemaire, and 3 Messidor, an 11, the Decree of 28 Floréal, an 13 (1805), the Ordonnance of the 21st June, 1814, the Ordonnance of the 23rd September, 1814, the Ordonnance of the 16th January, 1816, the Arrêté of the 26th January, 1815, the Ordonnance of the 30th October, 1815, the Ordonnance of the 25th January, 1816, and the Ordonnance of the 17th September, 1817, inasmuch as all or any of these Decrees, Arrêtés, or Ordonnances are contrary to the right of property, or to the constitutions or forms of administration of these English establishments, or to the rights of the Superiors of the English Mission as exercised with regard to these establishments snd to the English property attached to them, under the protection of the predecessor of His Most Christian Majesty Louis XVIII, should be repealed.

17. In the meantime, and, in the first instance, on account of the urgency of the case, Dr. Poynter humbly and earnestly begs that the execution of this Ordonnance of the 17th September, 1817, may be immediately suspended.

(Signed) *William Poynter*, Bishop of Italia.
Vic. Ap. Lond. Dept.

Paris, October 31, 1817.

Sir C. Stuart to the Duke de Richelieu.

Sir, Paris, January 10, 1818.

Since the representations of the Roman Catholic Bishop of London caused me to point out to your Excellency the inconveniences which must result to the English Roman Catholic clergy from the execution of His Most Christian Majesty's Ordonnance of the 17th September, 1817, the arrival of the Roman Catholic Bishops of Dublin and Edinburgh for the express purpose of seeking, through the intervention of His Majesty's Embassy at Paris in behalf of the Roman Catholics of those countries, relief against the provisions of the same Ordonnance, compels me to state that the effect to the several Regulations originally instituted during the late usurpation for political purposes, in a spirit of the most inveterate hostility against Great Britain, is much more extensive and pernicious than His Most Christian Majesty's present Government can be aware.

If the reasoning contained in the accompanying papers, which have been addressed to me by the Heads of the Catholic Church in the three Kingdoms, is not considered by His Most Christian Majesty's Ministers to be sufficiently conclusive to entitle them to the administration of their own funds in Franee, and to the adoption of measures necessary to prevent the appropriation of their resources to the use of individuals whose settlement in a foreign country is the consequence of treason against their own Sovereign, I shall feel it my duty to request that the Roman Catholic Bishops of the three Kingdoms may be permitted to take means to alienate their property, with a view to the removal of the several establishments to their own countries. I have, &c.

(Signed) *C. Stuart.*

The Duke de Richelieu to Sir C. Stuart.

Paris, le 27 Mars, 1818.

M. l'Ambassadeur,

Le Ministre de l'Intérieur ayant fait examiner, et ayant examiné lui-même, les représentations et les demandes de MM. les Évêques Catholiques de Londres, de Dublin, et d'Edimbourg, avec tout le soin et toute l'attention que requérait l'importance de cette affaire, et que l'intérêt que votre Excellence a témoigné y prendre aurait suffi pour y faire mettre, m'a dernièrement communiqué le résultat de cet examen. J'ai l'honneur d'en donner moi-même communication à votre Excellence, en réponse aux différentes lettres qu'elle m'avait snccessivement adressées.

On est remonté à l'origine des fondations faites en Frances pour les différents établissements Britanniques, les titres ont été consultés, les règles qui étaient observées pour l'administration de chacun d'eux avant la Révolution ont été recherchées, et l'on a acquis la certitude que rien ne justifie les prétentions de MM. les Évêques Catholiques d' Angleterre. Le Ministre de l'Intérieur pense, en conséquence, qu'il est impossible de les accueillir, et je dois avouer à votre Excellence que je ne puis que partager son opinion. Cependant, il n'a pas cru qu'il eut le pouvoir d'en prononcer le rejet; il lui a paru qu'une décision sur cette matière ne pouvait être prise administrativement, et que les Tribunaux étaient seuls compétents pour en donner une.

J'ai, en conséquence, l'honneur de faire connaître à votre Excellence que le Bureau Gratuit qui est institué pour surveiller l'administration des fondations, sera autorisé, comme les représentants, à éster en jugement et à soutenir les instances qui seraient introduites par MM. les Évêques Britanniques ou tous autres prétendants, et que les choses resteront en l'état où elles sont jusqu'à décision des cours de Justice. J'ai, &c.

(Signé) *Richelieu.*

(Translation.)

M. l'Ambassadeur. Paris, March 27, 1818.

The Minister of the Interior has caused to be examined, and has himself examined, the representations and claims of the Catholic Bishops

of London, Dublin, and Edinburgh, with all the care and attention demanded by the importance of this question and the interest taken therein by your Excellency, and has lately informed me of the result of this investigation. I have the honour to communicate the same to you Excellency, in reply to the successive notes which yon have addressed to me on the subject.

The examination has been carried back to the very origin of the endowments made in France for the various British estsablishmentss; the title-deeds have been consulted, the Regulations which were observed in the administration of each one before the Revolution have been looked up, and as the result it has been clearly established that there is nothing to justify the pretensions of the English Catholic Bishops. The Minister of the Interior considers, therefore, that it is not possible to entertain them, and I must confesst hat I cannot help sharing in his opinion. Nevertheless, he did not consider that he had the power to decree the rejection of their claims; it appeared to him that it was not possible to take ad ecision on such a question administratively, but that the Courts were alone competent to do so.

I accordingly have the honour to inform your Excellency that the charitable Bureau appointed to watch over the administration of the foundations will be authorized, as representing them, to plead in its own name, and dispute the pleas put forward by the English Bishops or any other claimants, and that, pending the decision of the Courts, matters shall remain as they now are.

I have, &c.
(Signed) *Richelieu,*

Sir C. Stuart to the Duke de Richelieu.

Sir, Paris, April 12, 1818.

The considerations to which your Excellency's note of the 27th March has adverted so nearly affect the interests of the British Catholic Church that I felt it my duty to seek information from the Prelates now in Paris respecting the facts stated in that communication, before I could tansmit your Excellency any reply.

Though these Prelates protest against any decision on the part of the Tribunals, of which they cannot admit the competence, the accompanying letter, being the result of the communications which have taken place upon the subject, prove their readiness to abide by the form of administration which the deeds and charters of the respective establishments shall be shown to prescribe, if, as has been represented to your Excellency, such document do really exist in the possession of His Most Christian Majesty's Government.

In resting their pretensions upon the exhibition of these documents, if it shall be proved no administration similar to the Bureau of which they have reason to complain existed at any period antecedent to the Revolution, thehope that their repeated complaints will be found deserving of consideration on the part of the French Government.

I have, &c.
(Signed) *C. Stuart.*

41.

SAINT-SIÈGE.

Note adressée par le Vatican aux chefs d'Etats catholiques représentés près le Saint-Siège relative à la visite rendue par M. Loubet, Président de la République Française, à Victor-Emmanuel III à Rome; du 28 avril 1904.

Archives diplomatiques. T. 90. No. 5. 1904.

La venue à Rome en forme officielle, de M. Loubet, Président de la République française, pour rendre visite à Victor-Emmanuel III a été un événement de si exceptionnelle gravité que le Saint-Siège ne peut le laisser passer sans appeler sur lui la plus sérieuse attention du Gouvernement que Votre Excellence représente.

Il est à peine nécessaire de rappeler que les Chefs d'Etats catholiques, liés comme tels par des liens spéciaux au Pasteur Suprême de l'Eglise, ont le devoir d'user vis-à-vis de Lui des plus grands égards, comparativement aux Souverains des Etats non-catholiques, en ce qui concerne sa dignité, son indépendance et ses droits imprescriptibles. Ce devoir, reconnu jusqu'ici et observé par tous, nonobstant les plus grandes raisons de politique, d'alliance ou de parenté, incombait d'autant plus au premier Magistrat de la République française, qui, sans avoir aucun de ces motifs spéciaux, préside en revanche une nation qui est unie par les rapports traditionnels les plus étroits avec le Pontificat Romain, jouit, en vertu d'un pacte bilatéral avec le Saint-Siège, de privilèges signalés, a une large représentation dans le Sacré-Collège des Cardinaux, et par suite dans le Gouvernement de l'Eglise universelle, et possède par singulière faveur le protectorat des intérêts catholiques en Orient. Par suite, si quelque Chef de Nation catholique infligeait une grave offense au Souverain Pontife en venant prêter hommage à Rome, c'est-à-dire au lieu même du Siège Pontifical et dans le même palais apostolique, à celui qui contre tout droit détient sa souveraineté civile et en entrave la liberté nécessaire et l'indépendance, cette offense a été d'autant plus grande de la part de Monsieur Loubet; et si, malgré cela, Le Nonce Pontifical est resté à Paris, cela est dû uniquement à de très graves motifs d'ordre et de nature en tout point spéciaux. La déclaration faite par M. Delcassé au Parlement français ne peut en changer ni le caractère ni la portée, — déclaration suivant laquelle le fait de rendre cette visite n'impliquait aucune intention hostile au Saint-Siège; car l'offense est intrinsèque à l'acte d'autant plus que le Saint-Siège n'avait pas manqué de prévenir ce même Gouvernement.

Et l'opinion publique, tant en France qu'en Italie, n'a pas manqué d'apercevoir le caractère offensif de cette visite, recherchée intentionnellement par le Gouvernement italien dans le but d'obtenir par là l'affaiblissement des droits du Saint-Siège et l'offense faite à sa dignité, droits et dignité que celui-ci tient pour son devoir principal de protéger et de défendre dans l'intérêt même des catholiques du monde entier.

Afin qu'un fait aussi douloureux ne puisse constituer un précédent quelconque, le Saint-Siège s'est vu obligé d'émettre contre lui les protestations les plus formelles et les plus explicites, et le soussigné Cardinal Secrétaire d'Etat, par ordre de Sa Sainteté, en informe par la présente Votre Excellence, en vous priant de vouloir porter le contenu de la présente Note à la connaissance du Gouvernement de . . .

Il saisit en même temps cette occasion de confirmer à Votre Excellence les assurances . . . etc. . .

Cardinal *Merry del Val.*

42.

ESPAGNE, COLOMBIE.

Convention pour la protection des œuvres artistiques et littéraires; signée à Bogota, le 28 novembre 1885.*)

State Papers. V. XC.

(Translation.)

His Excellency the President of the United States of Colombia and His Majesty the King of Spain, being equally desirous of extending in each others countries, which are united by, besides other ties, the fraternal bond of a common language, the enjoyment of copyright to works of literature, of science, and of fine arts which may be published in either of them, have deemed it expedient to conclude a special Convention for that purpose, based on reciprocity, and have therefore named as their Plenipotentiaries, that is to say:

His Excellency the President of the United States of Colombia, Señor Dr. Don José Maria Quijano Wallis, formerly Secretary for Foreign Affairs; and

His Majesty the King of Spain, Señor Don Bernardo J. de Cólogan, his Minister Resident to the United States of Colombia;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

Art. I. From and after the date on which the present Convention shall come into operation, the authors or translators of works of science,

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*) Les ratifications ont été échangées à Bogotá, le 22 novembre 1886.

literature, or art, or their authorized agents, who may establish with due formalities their right of property or copyright in one of the two Contracting States, shall, under the conditions specified in the present Convention, be entitled to exercise in the other the rights which are similarly conceded by the local Legislature to authors and translators of works of the same nature, or to their representatives, and it shall not be necessary to comply in either country with other formalities than those prescribed by the local Legislature of that where the works were originally published.

The terms „works of science, literature, or art," shall be understood to comprise publications of books, of pamphlets, of musical compositions, of drawing, of painting, of maps, of plans, or scientific designs, and of any other works that may be comprised within the terms of Article VIII of this Covention.

II. The authors of such works belonging to either of the two countries shall enjoy in the other the exclusive right of their own translation during the term fixed in accordance with this Convention for their original works.

Translators of ancient or modern works that may be considered in both countries as public property shall enjoy, as far as regards their translations, the right of property and its corresponding protection; but such rights and protection shall not exclude the same works from being translated by other writers. In other respects the rights of the translator, with regard to his own translation, shall be the same as those of the original author.

Articles which may appear in periodical publications, the copyright of which has not been specially reserved, may be republished in other similar periodicals; but in this case the publications from which they may be copied shall be quoted.

III. The right of property shall be guaranteed to the authors and translators of both countries for the period of fifteen years, which may be extended, if requisite, to a further term of equal length.

The above term shall be reckoned in both countries from the date on which the privilege was granted to the respective authors or translators. But should the Colombian Legislature extend the term of copyright fixed by the revised Law of 1834, it is hereby stipulated that such extension shall also apply to the two Contracting Parties from and after the exchange of the ratifications of this Convention.

IV. In the event of an infraction of the provisions of this Convention or of any fraud being practised upon copyright, the persons who may have committed such offences shall be liable in each country to the penalties and actions which are or may be prescribed by the laws of that country for such offences committed in respect of a work or production of home origin.

Any alteration of the title or text of a work, made for the purpose of republication, shall be considered as an aggravating circumstance of the fraud.

V. The High Contracting Parties hereby agree to furnish each other, once a quarter, through their Legations or other authorized agents, with a

list of the works whose authors or editors have legally obtained in their respective countries the privilege of copyright.

VI. Whenever formal proof should be required in either of the two countries to establish the copyright of an author, translator, or editor, it will be sufficient for such purpose to produce a certificate to that effect from the Minister of Public Works, if it relates to Spain, and from the Secretary of Public Works, if it refers to Colombia, attested, as the case may be, by the Minister of State or by the Secretary for Foreign Affairs, as well as by their Diplomatic or Consular Agents.

Should the author or translator, however, who has acquired the right of literary property under the laws of the one country, have transmitted one or more copies of his work to the Department of Public Works of the other, the production of an additional copy, together with the fact of the work having been registered in the official list referred to in the first paragraph of the preceding Article, shall be accepted as sufficient proof, dispensing with the necessity of the production of the above-mentioned certificate.

In all cases, the fact that a work has been registered in the aforesaid list shall be considered as a sufficient ground to authorize the suppression of its fraudulent reproduction, whenever a complaint against it should be made by a competent person, pending the investigation of the case.

VII. The printing, as well as the importation, exportation, and sale, of works referred to in this Convention, shall be equally considered as illegal and fraudulent whenever such acts are committed without the consent of the authorized proprietor, even in cases where the printing may have been done in countries out of Spain or Colombia, and the works thence imported through a third country.

For any fraudulent act of this nature committed in either of the contracting countries, the legal owner shall, in virtue of Articles IV and VI, be entitled to prosecute his right before the competent authorities.

VIII. The Contracting Parties shall extend to each other the privileges granted by either of them to the most favoured nation, that is to say, should either of them hereafter grant to a third Power, for the protection of literary property, greater privileges than are herein stipulated, the other Party shall be equally entitled to the same.

IX. From and after the date on which the present Convention shall come into operation, the subjects or citizens of the one country shall enjoy in the other, with respect to works printed or republished therein, all such rights as may be granted by the local Legislature in such cases, irrespectively of the place of their residence, and without their being subjected to any other condition beyond compliance with the prescribed formalities for the registration and consequent recognition of their copyright.

In the absence of the author or proprietor, proof of his work may be given by some other person in his name, who shall make the required declaration and apply for its registration, exhibiting at te same time his

power of attorney, attested by the Representative of one of the two nations, or else a simple written authorization duly legalized.

The subjects and citizens of the Contracting Parties shall be entitled to enjoy in each other's territories, besides the rights conferred upon them by this Convention, any extension of those rights which may hereafter be sanctioned by their respective Legislatures, whether in Spain for works of Spaniards reproduced in Colombia, or in Colombia for those of Colombians reproduced in Spain.

X. The High Contracting Parties hereby engage to communicate to each other all laws and regulations which they may respectively enact regarding the right of literary property, as far as the works protected by this Convention are concerned.

XI. The stipulations of the present Convention shall in no way affect the right which each of the two High Contracting Parties expressly reserves to itself of controlling or of prohibiting, by measures of legislation or of internal police, the sale or circulation of any work or production in regard to which either country may deem it expedient to exercise that right.

XII. The present Convention shall remain in force, from the date on which it may come into operation, for a period of six years, and its provisions shall continue to be binding, beyond that term, until the expiration of one year after either Party shall have given notice to the other of its intention to terminate the same.

Both Parties reserve to themselves the power of making, by common consent, in this Convention any modifications which may not be inconsistent with its spirit and principles, and which experience of its working may show to be desirable.

XIII. The present Convention shall be ratified, and the ratifications shall be exchanged at Bogotá within one year from the date thereof, or sooner if possible.

The date on which this Convention shall come into operation shall be determined in the Act of Exchange.

In witness whereof the respective Plenipotentiaries have signed the same in duplicate, and have affixed thereto the seal of their arms.

Done at Bogotá, the 28th day of November, 1885.

(L. S.) *J. M. Quijano Wallis.*
(L. S.) *Bernardo J. de Cólogan.*

Act of Exchange of Ratifications. Bogotá, November 22, 1886.

The Undersigned, the Minister for Foreign Affairs of the Republic of Colombia and the Minister Resident of Spain, being duly authorized to exchange the ratifications of the Convention respecting literary property which was concluded on the 28th November, 1885, and formally approved by their respective Governments, and having met for the purpose and

found their powers in due form, and that the ratifications agreed with each other, have exchanged the same, and, in accordance with the provision contained in Article XIII of the Convention, have fixed the 1st day of January, 1887, as thr date on which the said Convention shall commence to take effect in both countries.

The National Legislative Council having subsequently to the date of the said Convention enacted a law repealing that of 1834 respecting literary and artistic property, the Undersigned hereby agree, in accordance with Article III of the Convention, that the term of the right of literary property shall extend during the lifetime of the author and for the period of eighty years after his decease. It is, moreover, agreed between them that in conformity with Article X and the condition of reciprocity, and in virtue of the recent laws enacted in Colombia and in Spain, Spanish authors in Colombia and Colombian authors in Spain shall be equally entitled to enjoy, not only the rights conferred upon them by the present Convention, but also the advantages offered by the aforesaid laws; and the authors or their representatives may, therefore, claim the said privileges, either directly or through their respective Diplomatic or Consular authorities, after having presented the required legally authenticated copy of their works.

It is also hereby agreed that, in order to conform to the provision of the new Columbian Law above referred to, the words „Secretary of Public Works" stated in Article VI shall be read as „Minister of Public Instruction".

In witness whereof we have signed this Act of Exchange, and have affixed thereto our seals.

Done at Bogotá, the 22nd day of November, 1886.

(L. S.) *Vicente Restrepo.*
(L. S.) *Bernhardo J. de Cólogan.*

NOUVEAU

RECUEIL GÉNÉRAL

DE

TRAITÉS

ET

AUTRES ACTES RELATIFS AUX RAPPORTS DE DROIT INTERNATIONAL.

CONTINUATION DU GRAND RECUEIL

DE

G. FR. DE MARTENS

PAR

Felix Stoerk

Professeur de droit public à l'Université de Greifswald
Membre de l'Institut de droit international.

DEUXIÈME SÉRIE.

TOME XXXII.

DEUXIÈME LIVRAISON.

LEIPZIG
LIBRAIRIE DIETERICH
THEODOR WEICHER
1905.

43.

ITALIE, ARGENTINE.

Convention concernant l'exécution réciproque des Lettres de Requête et des Jugements; signée à Rome, le 1er août 1887.*)

State Papers. V. XCII.

His Majesty the King of Italy and his Excellency the President of the Argentine Republic, having resolved to regulate by means of a Convention the reciprocal execution of letters of request and of judgments between the two countries, have for this purpose named as their Plenipotentiaries:

His Majesty the King of Italy, Signor Avvocato Augusto (dei Baroni) Peiroleri, Grand Officer of his Orders of Saint Maurice and Saint Lazare, and of the Crown of Italy, Director-General of Consular and Commercial Affairs at the Ministry for Foreign Affairs; and

His Excellency the President of the Argentine Republic, Dr. Don Antonio del Viso, late Minister of State for the Department of the Interior, &c., his Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Italy;

Who, having communicated to each other their respective full powers, which were found in due and proper form, have agreed upon the following Articles:

Art. I. The competent judicial authorities of each of the two countries will give execution to letters of request directed to them by those of the other, whether they relate to civil or commercial matters, or to penal, but not political affairs.

II. Letters of request relating to penal matters may have for their object the citation, swearing, interrogation, and deposition of witnesses; the examination, copying, translation, verification, or handing over of documents; the sequestration and sending of incriminating objects („corpi di reato"), and any other thing which may concern a crime before the Courts, with the object of examining or clearing up the truth of the facts

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*) L'échange des ratifications a eu lieu à Rome, le 5 novembre 1901.

alleged by the prosecution or defence; saving, be it well understood, the rights of third parties to claim their rights before the competent Magistrate.

III. Letters of request in civil and commercial matters may include, in addition to the provisions of the preceding Article, the inspection and examination of books, their exhibition, and all other steps which serve to the decision of a case.

IV. Letters of request will be written in the language of the State which makes the request, and transmitted through the diplomatic channel.

They will contain, as far as possible, particulars of the domicile of the persons to be cited.

V. In the execution of the said letters of request, objections raised by the parties will always be permitted and duly forwarded that they may be judged on their merits.

VI. Private persons interested in the execution of letters of request in civil or commercial matters may constitute powers of attorney to act on their behalf.

VII. The expenses incurred in the execution of letters of request in civil and commercial matters will be at the charge of the party interested.

The expenses necessary for the execution of letters of request in penal matters will not be repaid, but will remain at the charge of the Government of the country in which they have been executed.

VIII. Final sentences in civil and commercial causes pronounced by the judicial authorities of either of the Contracting Parties will have as complete and reciprocal execution in the States of the other Party as those of its own Tribunals.

To obtain this result, however, the competent Tribunals of the district where the sentence is to be carried out must, in accordance with their respective laws of procedure, declare that it may be carried into effect, after having cited the interested parties to a summary judgment, in which will be examined only

1. Whether the sentence, of which the execution is requested, has been pronounced by the competent judicial authority;

2. If the parties, duly cited, appeared personally in the case or by means of a legal substitute, or if they were declared defaulters in conformity with the laws of procedure in force;

3. If the judgment be the result of a personal action, and if the obligation or obligations deriving from it be not prohibited by the laws of the State to which the request is addressed;

4. If the sentence does not contain provisions contrary to public order or to the public right of the State.

The execution of the sentence may be asked for through the diplomatic channel or directly by the party interested, with the proviso that, if asked for through the diplomatic channel, if the interested party has not constituted a power of attorney, this will be done for him officially by the Magistrate who has to decide on the judgment, and he will have to pay to the substitute thus appointed his just and lawful dues.

The confirmation of the sentence will be carried out in accordance with the laws of the respective countries, and the final legalization of the Ministry of Foreign Affairs will be affixed to it.

IX. The present Convention enters into effect on the day of the exchange of ratifications, and is of indefinite duration; it may cease to have effect, however, should one of the Contracting Parties give six months' notice to the other of its intention to modify it or annul it.

In token of which the respective Plenipotentiaries have signed the present Convention, and affixed their seals.

Given at Rome, in duplicate, this 1st day of August, 1887.

(L. S.) *A. Peiroleri.*
(L. S.) *A. del Viso.*

44.

AUTRICHE-HONGRIE, ESPAGNE.

Arrangement concernant la protection des inventions, marques de fabrique et de commerce et modèles; fait à Madrid, le 21 janvier 1897.*)

State Papers. V. XCII.

Pour assurer aux ressortissants Autrichiens ou Hongrois en Espagne, et, réciproquement, aux ressortissants Espagnols dans la Monarchie Austro-Hongroise, la protection de leurs inventions, marques de fabrique et de commerce, et modèles, les Soussignés, dûment autorisés à cet effet, ont arrêté les dispositions suivantes;

Art. I. Les ressortissants Autrichiens ou Hongrois en Espagne, y compris ses possessions d'outremer, et, réciproquement, les ressortissants Espagnols dans la Monarchie Austro-Hongroise, jouiront des mêmes droits que les nationaux pour tout ce qui concerne la protection des inventions, dessins et modèles, des marques de fabrique ou de commerce, ainsi que des raisons sociales et des noms et des autres désignations de marchandises.

II. Sont assimilés sous ce rapport aux ressortissants les autres personnes qui sont domiciliées ou ont leur établissement industriel principal sur les territoires de l'une des Parties Contractantes.

III. Les ressortissants des Etats de l'une des Parties Contractantes qui auront déposé la demande d'un brevet d'invention dans les territoires de cette Partie auront, pour effectuer le dépôt dans les territoires de

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*) Les ratifications ont été échangées à Madrid, le 11 juin 1900.

l'autre Partie, un droit de priorité pendant 90 jours à compter de la date du premier dépôt, et le dépôt postérieur aura, sous tous les rapports, le même effet comme s'il avait été fait au moment du premier dépôt.

Il en sera de même pour les marques de commerce ou de fabrique, les dessins, et les modèles, pourvu que 90 jours au plus tard, après la date de la demande d'enregistrement dans les territoires de l'une des Parties Contractantes, l'enregistrement de ces marques, dessins, et modèles ait été demandé dans les territoires de l'autre Partie Contractante.

Seront assimilés aux inventions les modèles d'utilité qui jouissent de la protection légale dans les territoires des Parties Contractantes.

Le délai de 90 jours accordé dans les paragraphes qui précèdent sera porté à 120 jours pour le dépôt ou l'enregistrement des demandes provenant des provinces et possessions Espagnoles d'outremer,

IV. La protection d'une marque de commerce ou de fabrique, d'une désignation de marchandises, d'un dessin, ou d'un modèle, enregistrés en conformité du paragraphe III dans les territoires de l'autre Partie Contractante, ne peut avoir dans ces territoires une durée plus longue que celle qu'elle a dans les territoires du pays d'origine.

D'ailleurs le droit exclusif pour les ressortissants des Etats de l'une des Parties Contractantes d'exploiter une marque ou une désignation de marchandises dans les territoires de l'autre ne peut être acquis que par ceux qui l'ont déjà légitimement acquis dans leur propre pays.

V. L'importation d'une marchandise fabriquée dans les territoires de l'une des Parties Contractantes sur les territoires de l'autre n'entraînera pas dans ces derniers territoires des conséquences préjudiciables au droit de protection accordée en vertu d'une invention, d'un dessin, ou d'un modèle.

Toutefois, l'ayant-droit restera soumis à l'obligation d'exploiter son invention, dessin, ou modèle conformément aux lois du pays où il introduit les objets protégés.

VI. L'enregistrement d'une marque enregistrée pour le propriétaire dans le pays d'origine, ou d'une désignation de marchandises dont il est constaté qu'elle jouit dans le pays d'origine d'une protection égale à celle acquise aux marques, ne peut être refusé par l'autorité compétente, à moins que cette marque ou cette désignation

a) Ne porte illicitement le portrait du Souverain ou des membres de la famille régnante ou les armes de l'État ou d'autres armes publiques; ou

b) Qu'elle ne soit généralement usitée dans le commerce, pour désigner certaines catégories de marchandises; ou

c) Qu'elle ne soit contraire à la morale ou à l'ordre public; ou enfin

d) Qu'elle ne soit en opposition par sa teneur avec les conditions effectives, de manière à induire le public en erreur.

Les Parties Contractantes se réservent le droit de refuser l'enregistrement de marques du pays d'origine, si celles-ci sont reconnues égales ou ressemblantes au point à donner lieu à des erreurs aux marques

déjà enregistrés; de même pourront-elles rayer les marques susmentionnées sur la demande des personnes préjudiciées par l'enregistrement.

VII. Chacune des Parties Contractantes prendra des mesures nécessaires, si elles n'avaient pas été déjà prises antérieurement, contre la vente et la mise en vente de marchandises qui, dans un intention frauduleuse, au préjudice du commerce légitime, sont revêtues d'armoiries d'État de l'autre Partie Contractante ou portent, comme indication de provenance, le nom ou les armes de localités ou de districts situés dans les territoires de l'autre Partie Contractante.

VIII. Les ressortissants des États de l'une des Parties Contractantes qui veulent s'assurer la propriété d'une invention, d'une marque d'un dessin, ou d'un modèle dans les territoires de l'autre Partie Contractante auront à remplir les formalités prescrites par la législation de cette dernière.

Ils devront en particulier faire déposer les descriptions de leurs inventions, ainsi que leurs marques, dessins, et modèles, conformément aux prescriptions en vigueur: en Espagne au Conservatoire pour l'Art et les Métiers à Madrid; dans la Monarchie Austro-Hongroise, pour l'Autriche—les descriptions d'inventions à l'autorité administrative d'une province; les marques, dessins, et modèles à la Chambre de Commerce et d'Industrie à Vienne; et pour la Hongrie—les descriptions d'inventions au Bureau Royal Hongrois de Brevets à Budapest; les marques, dessins, et modèles à la Chambre de Commerce et d'Industrie à Budapest.

IX. Le présent Arrangement entrera en vigueur quinze jours après l'échange des ratifications et demeurera obligatoire jusqu'à l'expiration de six mois à partir du jour où l'une ou l'autre des Parties Contractantes l'aura dénoncé.

X. L'Arrangement sera ratifié, et les ratifications en seront échangées à Madrid le plus tôt possible.

En foi de quoi les Soussignés l'ont signé et l'ont revêtu du cachet de leur armes.

Fait à Madrid, en double expédition, le 21 janvier, 1897.

(L. S.) *v. Dubsky.*
(L. S.) *El Duque de Tetuan.*

45.

BELGIQUE.

Loi concernant les Etrangers habitant le pays du 12 février 1897.

Moniteur belge, du 14 février 1897.

Léopold II, Roi des Belges, à tous présents et à venir, salut.

Les Chambres ont adopté et nous sanctionnons ce qui suit:

Art. 1er. L'étranger résidant en Belgique qui par sa conduite compromet la tranquillité publique, ou celui qui est poursuivi ou qui a été condamné à l'étranger pour les crimes ou délits qui donnent lieu à l'extradition, peut être contraint par le Gouvernement de s'éloigner d'un certain lieu, d'habiter dans un lieu déterminé ou même de sortir du royaume.

L'Arrêté Royal enjoignant à un étranger de sortir du royaume parce qu'il compromet la tranquillité publique sera délibéré en Conseil des Ministres.

2. Les dispositions de l'Article précédent ne pourront être appliquées aux étrangers qui se trouvent dans un des cas suivants, pourvu que la nation à laquelle ils appartiennent soit en paix avec la Belgique:

1) A l'étranger autorisé à établir son domicile dans le royaume;

2) A l'étranger marié avec une femme Belge dont il a un ou plusieurs enfants nés en Belgique pendant sa résidence dans le pays;

3) A l'étranger qui, marié avec une femme Belge, a fixé sa résidence en Belgique depuis plus de cinq ans et a continué à y résider d'une manière permanente;

4) A l'individu né en Belgique d'un étranger et qui y réside, lorsqu'il se trouve dans le délai d'option prévu par l'Article 9 du Code Civil.

3. L'Arrêté Royal, porté en vertu de l'Article 1er, sera signifié par huissier à l'étranger qu'il concerne.

Il sera accordé à l'étranger un délai qui devra être d'un jour franc au moins.

4. L'étranger qui aura reçu l'injonction de sortir du royaume sera tenu de désigner la frontière par laquelle il sortira; il recevra une feuille de route réglant l'itinéraire de son voyage et la durée de son séjour dans chaque lieu où il doit passer. En cas de contravention à l'une ou à l'autre de ces dispositions il sera conduit hors du royaume par la force publique.

5. Le Gouvernement pourra enjoindre de sortir du territoire à l'étranger qui quittera la résidence qui lui aura été désignée.

6. Si l'étranger auquel il aura été enjoint de sortir du royaume rentre sur le territoire, il pourra être poursuivi, et il sera condamné, pour

ce fait, à un emprisonnement de quinze jours à six mois, et, à l'expiration de sa peine, il sera conduit à la frontière.

7. Il sera rendu compte annuellement aux Chambres de l'exécution de la présente Loi.

8. Les Arrêtés d'expulsion pris en vertu des Lois antérieures sont maintenus.

9. La présente Loi sera obligatoire le lendemain de sa publication.

Promulguons la présente Loi, ordonnons qu'elle soit revêtue du sceau de l'État et publiée par la voie du „Moniteur."

Donné à Laeken, le 12 février, 1897.

(L. S.) *Léopold.*

Par le Roi:

V. Begerem, Ministre de la Justice.

46.

GRANDE-BRETAGNE, BELGIQUE.

Décret anglais concernant les Mariages Mixtes entre sujets anglais et belges; signé à Londres, le 16 février 1897.

London Gazette, 19 février 1897.

Foreign Office, February 16, 1897.

It is hereby notified that the Belgian Government have modified the Form of Declaration to be issued by the Belgian Legation in London in cases of mixed marriages in the United Kingdom between British and Belgian subjects, so as to bring it into accord with the Law of the 30th April, 1896, amending the Marriage Law of Belgium.

The following is a copy of the modified Form of Declaration:

Form of Declaration to be issued by the Belgian Minister in cases of Marriage in the United Kingdom between British and Belgian Subjects.

Le Ministre de Belgique à déclare

1. Que les Belges ne peuvent se marier sans avoir obtenu le consentement de leurs parents, ou des autres personnes indiquées par la loi.

2. Que d'après les pièces qui lui ont été présentées, M. (nom, prénom, et profession), né à le , demeurant à et qui propose de contracter mariage avec M. (nom, prénom, et profession), né à le , demeurant à , est de nationalité Belge.

3. Que les prescriptions de la Loi Belge du 26 décembre, 1891, ont été observées en ce qui concerne la publication de son futur mariage.

4. Que le futur époux a produit les pièces (indiquer ces pièces) qui établissent, soit qu'il a obtenu pour son mariage le consentement des parents ou d'autres personnes dont le consentement est exigé, soit que les parents dont le consentement eût été nécessaire sont décédés, soit que les formalités nécessaires pour suppléer à ce consentement ont été remplies (le Ministre pourrait indiquer ici de quelles personnes le consentement émane). Articles 1, 2, 3, 4, 5, 6, et 7 de la Loi Belge du 30 avril, 1896; Articles 154, 158, et 159 du Code Civil.

5. Qu'aucune opposition à ce mariage ne s'est produit jusqu'à ce jour, et que s'il ne s'en révèle jusqu'au moment de la célébration du mariage, les futurs époux seraient admis à contracter mariage en Belgique.

Le Ministre déclare, en outre, que le mariage contracté en pays étranger entre un Belge et un étranger est valable s'il a été célébré conformément aux lois du pays et à la condition

1) Que les futurs époux aient l'âge requis par la loi — 18 ans pour le futur, et 15 pour la future (Article 144 du Code Civil) — ou qu'ils aient obtenu une dispense d'âge (Arrêté Royal du 5 janvier, 1864);

2) Que le consentement de chacun des deux époux ait été absolument libre (Article 146 du Code Civil);

3) Que l'un des époux ne soit pas dans les liens d'un précédent mariage (Article 147 du Code Civil);

4) Que le mariage projeté ne viole pas les défenses de mariage entre parents et alliés au degré prohibé (Articles 161 à 163 du Code Civil), ou que les dispenses prévues par la loi aient été obtenues (Code Civil, Article 164; Loi du 28 février, 1831).

Le Ministre déclare encore que l'étrangère qui épouse un Belge devient Belge par le fait seul de son mariage (Article 12 du Code Civil), et que les enfants issus du mariage, même nés en pays étranger, sont Belges (Articles 10 et 312 du Code Civil).

En foi de quoi nous avons délivré le présent certificat, pour valoir ce que de raison.

Fait à , le , 18 .

(L. S.) Le Ministre de Belgique.

The Agreement entered into between the British and Belgian Governments in November 1888 on the subject of mixed marriages in the United Kingdom between British and Belgian subjects was inserted in the „London Gazette“ of the 5th february, 1889.

47.

CHILI, EQUATEUR.

Convention concernant l'admission des Sujets réciproques à l'exercice des professions libérales dans le pays de l'autre partie contractante; signée à Quito, le 9 avril 1897.*)

State papers. V. XCII.

(Translation.)

In the city of Quito, on the 9th day of the month of April, 1897, his Excellency the Minister for Foreign Affairs of Equator, Dr. Don Belisario Alban Mestanza, and his Excellency the Envoy Extraordinary and Minister Plenipotentiary of Chile, Don Beltran Mathieu, with a view to strengthen the bonds of loyal friendship happily subsisting between the two Republics, have, as duly authorized by their respective Governments, signed the following Convention:

Art. I. Lawyers, doctors, surgeons, apothecaries, engineers, and land surveyors admitted to the Tribunals of Justice, Universities, and other scientific Corporations of Chile shall be free to exercise their profession in the territory of the Republic of Equator, and, in the same way, those who may have obtained their diploma in Equator shall be able to use the same in Chile, without any requirement other than that of proving the genuineness of the diploma and the identity of the person.

II. The authenticity of the diploma shall be shown by the legalization effected in the usual form, and the identity of the person by a certificate issued by the Legation, or in default of a Legation, by the Consulate of the country whose authorities granted the diploma in question.

III. These formalities having been complied with, the Corporations or public functionaries to whom the faculty is assigned by the laws of either country to grant the respective diplomas shall give to the interested party the necessary authorization for the exercise of his profession.

IV. This Convention shall take effect from the day of the exchange of ratifications, and shall remain in force until it shall be abrogated by mutual consent of the Contracting Parties, or until one of them shall express to the other, twelve months in advance, their desire that the Convention cease to take effect.

V. The present Convention shall be ratified, and the ratifications exchanged at Quito or Santiago, as soon as may be found possible.

In faith whereof the respective Plenipotentiaries have signed the Convention in duplicate, and have affixed thereunts their seals.

(L. S.) *B. Alban Mestanza.*
(L. S.) *B. Mathieu.*

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*) Les ratifications ont été échangées à Quito, le 27 avril 1899.

48.

GRANDE-BRETAGNE, BULGARIE.

Notification concernant la légalisation des actes notariés, procurations, contrats et autres documents destinés à être produits en Bulgarie; faite à Londres le 20 avril 1897.

London Gazette 23 avril 1897.

Foreign Office, April 20, 1897.

The Marquess of Salisbury, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Agent and Consul-General in Bulgaria the following Notification, which has been officially communicated to him by the Bulgarian Government:

Les actes notariés, procurations, contrats et autres documents émanant de la Grande-Bretagne et destinés à être produits en Bulgarie doivent être légalisés par le Ministère des Affaires Étrangères du Royaume, dont la signature et le sceau seront confirmés par l'Agence Diplomatique de Bulgarie, ou, à défaut de celle-ci, par l'Agence Diplomatique et Consulat-Général de Sa Majesté Britannique à Sophia. Les documents non revêtus de ces légalisations ne sont pas valides en Bulgarie.

49.

PERSE, BULGARIE.

Arrangement pour régler la question de la nationalité des sujets d'origine Perse et habitant la Bulgarie; signé à Sophia, le 3/15 juin 1897.

State Papers. V. XC.

Afin de régler la question de la nationalité d'un certain nombre d'individus domiciliés en Bulgarie, et dont la sujetion Persane est contestée par le Gouvernement Princier, une Commission Mixte s'est réunie à Sofia, composée de Mr. F. Elliot, Agent Diplomatique et Consul-Général de Sa Majesté Britannique, chargé des intérêts Persans en Bulgarie, spécialement autorisé à cet effet par son Excellence M. l'Ambassadeur de Perse à Constantinople, et de MM. G. Vernazza, Directeur du Protocole, et

M. Nestoroff, Chef de la Section Politique au Ministère Princier des Affaires Étrangères, autorisés à cet effet par son Excellence le Président du Conseil et Ministre des Affaires Étrangères et des Cultes:

Lesquels ont conclu l'Arrangement suivant:

Art. I. Les individus domiciliés en Bulgarie avant le 1/13 juillet, 1878, dont la nationalité Persane a été reconnue et confirmée par les autorités Ottomanes d'une manière authentique et officielle, seront reconnus comme sujets Persans.

II. Les individus domiciliés en Bulgarie avant le 1/13 juillet, 1878, et qui auraient acquis la nationalité Persane après cette date, seront reconnus comme sujets Persans dans le cas où le changement de nationalité aurait eu lieu avec la sanction de l'autorité Princière compétente.

III. Les individus d'origine Ottomane qui se sont établis en Bulgarie après le 1/13 juillet, 1878, et qui auraient acquis la nationalité Persane avant cette date, seront reconnus comme sujets Persans dans le cas où le changement de nationalité aurait été confirmé par les autorités Ottomanes d'une manière authentique et officielle.

IV. Les individus d'origine Ottomane qui, ayant immigré en Bulgarie aprés le 1/13 juillet, 1878, auraient acquis la nationalité Persane après cette date, mais avant leur immigration, seront considérés comme sujets Persans dans le cas où cette nationalité aurait été acquise en conformité avec les prescriptions de la loi Ottomane.

V. Les sujets Persans résidant en Bulgarie, ainsi que les individus dont la nationalité Persane est contestée, sont tenus, conformément aux Articles 19, 20, et 21 de la Loi sur les passeports en date du 12 février, 1897, de présenter leurs passeports ou billets de séjour aux autorités locales compétentes, dans un délai d'un mois à partir de l'avis qui sera affiché par les autorités Princières.

Les Préfectures respectives dresseront des listes en conséquence, qui seront transmises au Ministère Princier des Affaires Étrangères et des Cultes.

VI. Les personnes qui revendiquent leur droit à la nationalité Persane, et auxquelles ce droit est contesté par les autorités Princières, sont tenues de présenter à la Commission Mixte les documents nécessaires à l'appui de leurs revendications dans un délai d'un mois qui commencera à courir de la date qui sera ultérieurement fixée par la Commission.

VII. Les personnes dont la nationalité Persane aura été reconnue par la Commission Mixte seront munies d'un certificat ad hoc délivré par le Ministère Princier des Affaires Étrangères et des Cultes.

VIII. Les individus qui seront reconnus comme sujets Persans en base de cet Arrangement, et qui auraient été astreints précédemment à satisfaire aux obligations incombant aux sujets Bulgares, n'auront droit à aucune indemnité de ce chef. Ceux dont les titres à la nationalité Persane n'auront pas été reconnus ne seront passibles d'aucune pénalité du fait de n'avoir pas rempli jusqu'à ce moment les obligations militaires ou autres afférentes aux sujets Bulgares.

IX. Le présent Arrangement s'appliquera seulement aux cas de nationalité Persane contestée qui se sont produits jusqu'à ce jour, ou qui seront signalés par les Préfectures dans les listes dont il est fait mention à l'Article V.

Fait en double exemplaire à Sophia, le 3/15 juin, 1897.

(L. S.) *F. Elliot.*
(L. S.) *G. Vernazza.*
(L. S.) *M. Nestoroff.*

50.

FRANCE.

Décret concernant l'adhésion de la France à la convention conclue à Montévideo le 11 janvier 1889*) pour la garantie réciproque de la propriété littéraire et artistique; signé à Paris le 17 août 1897.

State Papers. Vol. XC.

Le Président de la République Française,

Sur la proposition du Ministre des Affaires Étrangères et du Ministre de l'Instruction Publique et des Beaux-Arts,

Vu la Loi du 30 juillet, 1897,

Décrète:

Art. 1er. La France ayant adhéré à la Convention conclue à Montevideo le 11 janvier, 1889, entre la République Argentine, la Bolivie, la Brésil, le Chili, le Paraguay, le Pérou, et l'Uruguay, pour la garantie réciproque de la propriété littéraire et artistique, cette Convention, dont suit la traduction authentique, produira son plein et entier effet dans les rapports de la France et de la République Argentine, qui a pris acte de l'adhésion de la France:

Traité pour la Protection de la Propriété Littéraire et Artistique, signé la 11 janvier, 1889, à Montevideo, par les Plénipotentiaires des Etats suivants: République Argentine, Bolivie, Brésil, Chili, Paraguay, Pérou, et Uruguay.

Son Excellence le Président de la République Argentine, son Excellence le Président de la République de Bolivie, Sa Majesté l'Empereur du Brésil,

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*) V. **N. R. G.** 2e s. XVIII. 418.

son Excellence le Président de la République du Chili, son Excellence le Président de la République du Paraguay, son Excellence le Président de la République du Pérou, et son Excellence le Président de la République Orientale de l'Uruguay, ont résolu de conclure un Traité pour la protection de la propriété littéraire et artistique, et se sont fait représenter au Congrès réuni à cet effet à Montevideo, sur l'initiative des Gouvernements de la République Argentine et de la République Orientale de l'Uruguay, par leurs Plénipotentiaires respectifs, savoir:

Son Excellence le Président de la République Argentine par M. le Dr. Don Roque Saenz Peña, Envoyé Extraordinaire et Ministe Plénipotentiaire de la dite République dans la République Orientale de l'Uruguay; et par M. le Dr. Don Manuel Quintana, Académicien, Membre de la Faculté de Droit et de Sciences Sociales de l'Université de Buenos-Ayres;

Son Excellence le Président de la République de Bolivie, par M. le Dr. Don Santiago Vaca-Guzman, Envoyé Extraordinaire et Ministre Plénipotentiaire de la dite République dans la République Argentine;

Sa Majesté l'Empereur du Brésil, par M. le Dr. Domingos de Andrade Figueira, Conseiller d'Etat et Député à l'Assemblée Générale Législative;

Son Excellence le Président de la République du Chili, par M. Don Guillermo Matta, Envoyé Extraordinaire et Ministre Plénipotentiaire de la dite République dans les Républiques Argentine et Orientale de l'Uruguay; et par M. Don Belisario Prats, Ministre de la Cour Suprême de Justice;

Son Excellence le Président de la République du Paraguay, par M. le Dr. Don Benjamin Aceval; et par M. le Dr. Don José Z. Caminos;

Son Excellence le Président de la République du Pérou, par M. le Dr. Don Cesareo Chacaltana, Envoyé Extraordinaire et Ministre Plénipotentiaire de la dite République dans les Républiques Argentine et Orientale de l'Uruguay; et par le Dr. Don Manuel Maria Galvez, Procureur-Général de l'Excellentissime Cour Suprême de Justice;

Son Excellence le Président de la République Orientale de l'Uruguay, par M. le Dr. Don Ildefonso Garcia Lagos, Ministre Secrétaire d'Etat du Département des Relations Extérieures; et par M. le Dr. Gonzalo Ramirez, Envoyé Extraordinaire et Ministre Plénipotentiaire de la dite République dans la République Argentine;

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, et après délibérations, ont arrêté les stipulations suivantes:

Art. I. Les Etats Signataires s'engagent à reconnaître et à protéger les droits de la propriété littéraire et artistique, conformément aux stipulations du présent Traité.

II. L'auteur de toute œuvre littéraire ou artistique et ses ayants droits jouiront dans les Etats Signataires des droits que leur accorde la loi du pays où a eu lieu la première publication ou production de l'œuvre.

III. Le droit de propriété d'une œuvre littéraire ou artistique comprend la faculté pour l'auteur d'en disposer, de la publier, de l'aliéner, de la traduire, ou d'autoriser sa traduction, et de la reproduire de toutes manières.

IV. Aucun Etat ne sera obligé de reconnaître le droit de propriété littéraire ou artistique pendant un laps de temps plus long que celui qui est accordé aux auteurs jouissant de ce droit sur son propre territoire. Ce laps de temps pourra être limité à celui qui est établi dans le pays d'origine, si ce dernier est d'une durée moindre.

V. Par l'expression œuvres littéraires et artistiques on entend les livres, les brochures, et tous autres écrits, les œuvres dramatiques ou dramatico-musicales, les œuvres chorégraphiques, les compositions musicales avec ou sans paroles, les dessins, les peintures, les sculptures, les gravures, les œuvres photographiques, les lithographies, les cartes géographiques, croquis et travaux plastiques relatifs à la géographie, à la topographie, à l'architecture, ou aux sciences en général; enfin cette expression s'applique à toute production du domaine littéraire ou artistique qui peut être publiée d'une manière quelconque par voie d'impression ou de reproduction.

VI. Les traducteurs d'œuvres pour lesquelles n'existe pas ou est éteint le droit de propriété littéraire garanti jouiront, pour leurs traductions, des droits établis par l'Article III, mais ils ne pourront empêcher la publication d'autres traductions de la même œuvre.

VII. Les articles de journaux pourront être reproduits, en indiquant la source où on les prend, à l'exception des articles consacrés aux sciences et aux arts et dont la reproduction aura été interdite expressément par leurs auteurs.

VIII. Peuvent être publiés dans la presse périodique, sans nécessité d'autorisation aucune, les discours prononcés ou lus dans les assemblées délibérantes, devant les tribunaux judiciaires, ou dans les réunions publiques.

IX. Sont considérées comme reproduction illicites les appropriations indirectes non autorisées d'une œuvre littéraire ou artistique désignées sous des noms divers tels que „adaptations, arrangements," &c., et qui ne sont en réalité que des reproductions de cette œuvre ne présentant pas le caractère d'une œuvre originale.

X. Les droits d'auteur seront reconnus, jusqu'à preuve contraire, en faveur des personnes dont les noms ou les pseudonymes seront indiqués sur l'œuvre littéraire ou artistique.

Si les auteurs ne veulent pas faire connaître leur nom, ils devront désigner les éditeurs auxquels les droits d'auteur seront attribués.

XI. Les responsabilités encourues par ceux qui usurpent le droit de propriété littéraire ou artistique seront établies devant les tribunaux et régies par les lois du pays où la fraude aura été commise.

XII. La reconnaissance du droit de propriété des œuvres littéraires ou artistiques n'empêche pas les Etats Signataires d'interdire, conformément à leur législation, qu'on reproduise, publie, fasse circuler, représente ou expose les œuvres considérées comme contraires à la morale et aux bonnes mœurs.

XIII. Il n'est pas indispensable, pour que ce Traité soit mis en vigueur, qu'il soit ratifié simultanément par tous les États Signataires. Ceux qui l'approuvent le feront savoir aux Gouvernements des Républiques

Argentine et Orientale de l'Uruguay, qui en informeront les autres Parties Contractantes. Cette procédure tiendra lieu d'échange de ratification.

XIV. L'échange une fois effectué dans la forme indiquée par l'Article précédent, le présent Traité demeurera en vigueur à partir de l'accomplissement de cette formalité pendant un temps illimité.

XV. Si l'un des États Signataires jugeait à propos de dénoncer le Traité ou d'y introduire des modifications, il en aviserait les autres; mais la dénonciation ne produira ses effets que deux ans après l'acte de dénonciation, délai pendant lequel on pourra conclure un nouvel accord.

XVI. L'Article XIII s'applique aux États qui, n'ayant pas participé à ce Congrès, vondraient adhérer au présent Traité.

En foi de quoi les Plénipotentiaires des États ci-dessus mentionnés ont signé le présent Traité et y ont apposé leurs sceaux.

Fait à Montevideo, en sept exemplaires, le 11 janvier, 1889.

(L. S.) *Roque Saenz Peña.*
(L. S.) *Manuel Quintana.*
(L. S.) *Santiago Vaca-Guzman.*
(L. S.) *Domingos de A. Figueira.*
(L. S.) *Guillermo Matta.*
(L. S.) *B. Prats.*
(L. S.) *Benjamin Aceval.*
(L. S.) *José Z. Caminos.*
(L. S.) *Cesareo Chacaltana.*
(L. S.) *M. M. Galvez.*
(L. S.) *Ild. Garcia Lagos.*
(L. S.) *Gonzalo Ramirez.*

2. Le Ministre des Affaires Étrangères et le Ministre de l'Instruction Publique et Beaux-Arts sont chargés, chacun en ce qui le concerne, de l'exécution du présent Décret.

Fait à Paris, le 17 août, 1897.

(L. S.) *Félix Faure.*

Par le Président de la République:

G. Hanotaux, Ministre des Affaires Étrangères.
A. Rambaud, Ministre de l'Instruction Publique et des Beaux-Arts.

51.

ALLEMAGNE, RUSSIE.

Arrangement concernant le Traitement des sujets de l'autre partie contractante sur pied de parfaite égalité aux propres sujets comme demandeurs principaux ou intervenants, devant les tribunaux civils; fait à Saint-Pétersbourg, le $\frac{\text{27 août}}{\text{8 septembre}}$ 1897.

State Papers. Vol. XCII.

Le Soussigné, Ministre des Affaires Étrangères de Sa Majesté l'Empereur de Russie, a l'honneur d'informer son Altesse Sérénissime l'Ambassadeur Extraordinaire et Plénipotentiaire de Sa Majesté l'Empereur d'Allemagne qu'il adhère, au nom du Gouvernement Impérial, aux propositions suivantes, ayan fait l'objet d'une entente préalable entre les Gouvernements Impériaux de Russie et d'Allemagne:

Il ne sera exigé des sujets Russes qui auraient à poursuivre une action en Allemagne, comme demandeurs principaux ou intervenants, aucuns droit, caution ou dépôt auxquels ne seraient pas soumis les sujets Allemands, conformément aux lois de l'Empire Allemand.

Réciproquement, il ne sera exigé des sujets Allemands qui auraient à poursuivre une action en Russie, comme demandeurs principaux ou intervenants, aucuns droit, caution ou dépôt auxquels ne seraient pas soumis les sujets Russes d'après les lois de l'Empire Russe.

Le Soussigné profite de cette occasion pour renouveler à Son Altesse Sérénissime le Prince de Radolin l'assurance de sa haute considération.

Saint-Pétersbourg, le $\frac{\text{27 août}}{\text{8 septembre}}$ 1897.

Comte *Mouraviefe.*

Le Soussigné, Ambassadeur Extraordinaire et Plénipotentiaire de Sa Majesté l'Empereur d'Allemagne, dûment autorisé, déclare adhérer, au nom du Gouvernement Impérial, aux propositions suivantes, ayant fait l'objet d'une entente préalable entre les Gouvernements Impériaux d'Allemagne et de Russie:

Il ne sera exigé des sujets Allemands qui auraient à poursuivre une action en Russie, comme demandeurs principaux ou intervenants, aucuns droit, caution ou dépôt auxquels ne seraient pas soumis les sujets Russes, conformément aux lois de l'Empire Russe.

Réciproquement, il ne sera exigé des sujets Russes qui auraient à poursuivre une action en Allemange, comme demandeurs principaux ou

intervenants, aucuns droit, caution ou dépôt auxquels ne seraient pas soumis les sujets Allemands d'après les lois de l'Empire Allemand.

Le Soussigné profite de cette occasion pour renouveler à son Excellence M. le Ministre des Affaires Étrangères de Sa Majesté l'Empereur de Toutes les Russies l'assurance de sa haute considération.

Saint-Pétersbourg, le $\frac{\text{27 août}}{\text{8 septembre}}$ 1897.

Radolin.

52.

SIAM.

Loi concernant le mariage des étrangers; signé à Bangkok, le 9 janvier 1898.

Journal du Gouvernement, 9 janvier 1898.

Considérant qu'il nous a été rapporté, par notre Ministre des Affaires Étrangères que des résidents étrangers rencontrent des difficultés à la célébration et à la preuve légale de leur mariage lorsqu'ils l'ont contracté ou se proposent de le contracter conformément à la loi de ce pays, et qu'en conséquence il paraît désirable, dans l'intérêt de ces résidents, d'expliquer, par voie d'interprétation officielle, quelles sont les conditions requises pour la célébration de mariages valables, en vertu de la loi Siamoise, et de décréter ensuite dans quelle forme la célébration de pareils mariages sera prouvée, quand les deux parties ou l'une d'elles sont étrangères:

Avons décrété et décrétons (ce qui suit):

Art. 1er. Le mariage est, d'après les coutumes et la loi Siamoises, un contrat entre homme et femme, auquel sont applicables les principes généraux relatifs aux autres contrats.

Il est donc conclu valablement toutes les fois qu'il résulte clairement des paroles échangées ou des rites observés que les deux parties consentent librement à se prendre réciproquement pour mari et pour femme, pourvu qu'il n'existe, dans le chef d'aucun d'eux, quelque motif particulier d'incapacité.

2. Lorsque les deux parties, ou l'une d'elles, résident au Siam, leur consentement mutuel et simultané de se prendre réciproquement pour mari et femme peut être prouvé légalement soit au moment de la célébration du mariage, soit ultérieurement par une déclaration à cet effet, faite en présence d'au moins quatre témoins honorablement connus, devant le Ministre du Gouvernement Local ou le fonctionnaire qui le remplace, si le mariage est ou a été célébré à Bangkok ou devant le Gouverneur de la province où les parties ou l'une d'elles vit au moment de la déclaration si le mariage est ou a été contracté dans une autre partie du royaume.

3. Un acte écrit de la déclaration dont il est fait mention dans l'Article 2 sera rédigé (soit en Siamois seulement, soit, si les parties le désirent, en Français et en Anglais, chacun des deux textes ayant la même signification et la même valeur), en deux originaux, par le fonctionnaire devant qui la dite déclaration a été faite. Cet acte mentionnera la date du mariage, les noms, l'âge, et le lieu de naissance de chacune des parties, énonciations à l'appui desquelles des preuves satisfaisantes seront produites, et chacun des actes sera signé, par le fonctionnaire en question, par les deux parties et par quatre témoins, ainsi que par ceux des parents de l'une des parties ou des deux parties qui se trouveraient présents.

L'un de ces originaux sera conservé soigneusement et enregistré dans les archives du bureau où il a été rédigé, et l'autre sera envoyé sans retard à notre Ministre des Affaires Étrangères, qui l'enregistrera et le conservera dans les archives de son Département.

4. Des extraits certifiés conformes ou des expéditions de l'acte dont il est fait mention à l'Article 3 seront délivrés à toute personne qui en fera la demande, moyennant le payement de 4 ticaux par extrait ou expédition, si le document est rédigé en Siamois seulement, et de 8 ticaux s'il est rédigé en Siamois et en Anglais.

Donné à Bangkok, le 9 janvier 1898.

53.

ALLEMAGNE, PAYS-BAS.

Convention concernant l'extension, aux vétérinaires, de la Convention du 11 décembre 1873, au sujet de l'Admission Réciproque des Médecins, Chirurgiens, et Sages-Femmes des communes frontières, à l'exercice de leur Art.—Signée à La Haye, le 23 février 1898.*)

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, au nom de l'Empire Allemand, d'une part, et Sa Majesté la Reine des Pays-Bas, et en son nom la Reine-Régente du Royaume des Pays-Bas, d'autre part, ayant jugé utile d'autoriser réciproquement à l'exercice de leur art les vétérinaires résidant dans les communes limitrophes, ont résolu de conclure une Convention à cet effet et ont nommé dans ce but pour leurs Plénipotentiaires, savoir:

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, M. le Baron François Egon de Brincken, Conseiller Intime Actuel, Chavalier de l'Ordre

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*) Ratifications échangées à La Haye, le 14 mars 1899.

de l'Aigle Rouge, première classe, &c., son Envoyé Extraordinaire et Ministre Plénipotentiaire près la Cour Royale des Pays-Bas;

Sa Majesté la Reine-Régente du Royaume des Pays-Bas, M. Guillaume Henri de Beaufort, Chevalier de l'Ordre du Lion Néerlandais, &c., Ministre des Affaires Étrangères;

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des Articles suivants:

Art. I. Les vétérinaires Allemands établis dans les communes Allemandes limitrophes des Pays-Bas, et les vétérinaires Néerlandais établis dans les communes Néerlandaises limitrophes de l'Allemagne, jouiront en ce qui concerne l'exercice de leur art—y compris, dans le cas où aucun pharmacien ne serait établi dans la commune, la préparation et la délivrance de médicaments destinés au bétail soumis à leur traitement—des avantages stipulés par la Convention, conclue le 11 décembre, 1873,*) entre l'Allemagne et les Pays-Bas, sous les conditions énoncées aux Articles III et IV de la dite Convention.

II. Sont exclus du bénéfice de l'Article précédent, dans les Pays-Bas, les vétérinaires Allemands qui ne possèdent pas un diplôme délivré en conformité des dispositions du § 29 de la „Reichs-Gewerbeordnung" et des Ordonnances réglementaires concernant l'exercice de l'art vétérinaire, et en Allemagne les vétérinaires Néerlandais qui ne jouissent de la faculté d'exercer l'art vétérinaire qu'en vertu des Articles 15 et 16 de la Loi Néerlandaise du 8 juillet, 1874, modifiée par celles du 4 avril, 1875, et du 15 avril, 1886.

III. Les vétérinaires Allemands qui feraient usage de l'autorisation accordée par cette Convention seront exempts dans les Pays Bas de toute contribution directe qui pourrait leur être imposée en vue de l'exercice de leur art dans les cummunes limitrophes ou des revenus qui en proviennent.

Les vétérinaires Néerlandais seront, sous les mêmes conditions, exempts en Allemagne de toute contribution analogue.

IV. La présente Convention sera ratifiée, et l'échange des ratifications se fera à La Haye le plus tôt possible.

Elle entrera en vigueur six semaines après l'échange des ratifications, et aura la même durée que la Convention du 11 décembre, 1873, à laquelle elle se rapporte.

En foi de quoi les Plénipotentiaires ont signé la présente Convention, et y ont apposé les sceaux de leurs armes.

Fait, en double, à La Haye, le 23 février, 1898.

(L. S.) *Brincken.*
(L. S.) *W. H. de Beaufort.*

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*) V. **N. R. G.** 2e s. I. 227.

54.

VÉNÉZUÉLA.

Déclaration du Président concernant les communications à faire aux représentants des Etats étrangers dans le cours des procès intentés contre leurs sujets respectifs; signée à Caracas, le 22 mars 1898.

State Papers. Vol. XC.

Department for Foreign Affairs, Carácas,
(Translation.) March 22, 1898.

The President of the Republic in Council of Ministers has, according to a Resolution sent yesterday to the Department of the Interior, ordered that for the stricter fulfilment of the dispositions of the Civil Procedure and of the Criminal Administration the proceedings and evidence necessary to inform them of the course of any legal process shall be furnished to the parties interested, and, as it has been the constant practice, that when subjects or citizens of other nations have been interested or implicated in civil cases or criminal prosecutions before the Tribunals of the Republic, their respective Legations may ask for and obtain unofficially through this Department, or their Consuls or Consular Agents through the proper local authorities, the evidence and facts which will make them acquainted with the condition of the suits or the state in which they are at the termination of each legal process — a custom which tends to confirm the regularity of the proceedings in each case. The President of the Republic, also in Council of Ministers, has determined to authorize once for all and in full form the Department for Foreign Affairs to request from the Judicial authorities through the proper channel, and subject to the cases reserved as provided by law, the proceedings and evidence which the Legations may require with reference to the course of any civil or criminal case entered upon in Venezuela by one or more of the citizens or subjects of different nations, and has ordered that the Home Department is to cause the local authorities to attend to the requests which may in like manner be made by Consuls or Consular Agents in the Republic. This regulation embraces cases of complaints arising out of military recruiting.

To be communicated and published.

(For the National Government),
Calcaño Matthius.

55.

TUNISIE.

Décret concernant l'établissement des étrangers en Tunisie; signé à Tunis le 13 avril 1898.

State Papers. V. XCII.

Louanges à Dieu!

Nous, Ali-Pacha-Bey, Possesseur du Royaume de Tunis,
Sur la proposition de notre Premier Ministre,

Avons pris le Décret suivant:

Art. 1er. A partir du 1er mai, 1898, tout étranger qui voudra établir sa résidence en Tunisie ou y exercer une profession, un commerce ou une industrie quelconque, devra, dans un délai de cinq jours, à partir de son arrivée, faire devant l'autorité de police locale une déclaration de résidence en justifiant de son identité. S'il n'est pas porteur de pièces justificatives nécessaires, l'autorité de police du lieu pourra, avec l'approbation de notre Premier Ministre, lui accorder un délai pour se les procurer.

2. La déclaration devra comporter les nom et prénoms du déclarant, ceux de ses père et mère, sa nationalité, le lieu et la date de sa naissance, le lieu de son dernier domicile, sa profession ou ses moyens d'existence.

Elle sera individuelle, même pour les membres d'une même famille, à l'exception des enfants mineurs n'exerçant ni profession, ni commerce, ni industrie.

Il sera tenu, à cet effet, un registre d'immatriculation des étrangers suivant la forme déterminée par un Arrêté de notre Premier Ministre. Un extrait de ce registre sera délivré au déclarant et devra être représenté par lui à toute réquisition des agents de l'autorité. Cet extrait sera frappé d'un droit de timbre de 90 centimes.

3. Les déclarations seront faites à Tunis, au commissariat de la Sûreté. Dans les autres localités de la Régence elles seront faites au Commissaire de Police; à défaut du Commissaire de Police, au Commandant de la Brigade de Gendarmerie ou au contrôleur civil de la circonscription.

Les pièces justificatives seront laissées en dépôt au bureau de l'autorité de police du lieu, qui en fera mention sur le récépissé de déclaration et les restituera à l'intéressé sur la déclaration de ce dernier qu'il quitte la localité.

4. En cas de changement de résidence, l'intéressé devra faire viser son certificat d'immatriculation, dans les deux jours de son arrivée, par l'autorité de police de sa nouvelle résidence, et déposer à nouveau ses papiers, dans les conditions prévues par l'Article précédent.

5. Toute personne qui emploiera un étranger n'ayant pas satisfait aux prescriptions du présent Décret sera punie d'une amende de 1 à 15 fr. inclusivement et d'un emprisonnement de un à cinq jours inclusivement, ou l'une de ces peines seulement. Ces peines pourront être portées jusqu'au double lorsqu'il aura été rendu contre le contrevenant, dans les douze mois précédents, un jugement de condamnation pour la même contravention commise dans le ressort du même Tribunal.

6. Tout étranger qui n'aura pas fait, dans le délai déterminé, les déclarations réglementaires prescrites par les Articles 1 à 6 ci-dessus, ou qui refusera de produire son certificat à la première réquisition, ou qui, en cas de changement de résidence, n'aura pas fait viser son certificat, sera passible d'une amende de 50 à 200 fr.

Celui qui aura fait sciemment une déclaration fausse ou inexacte sera puni d'un emprisonnement de six jours à un mois et d'une amende de 100 à 300 fr.

Dans les cas prévus par les paragraphes 1 et 2, le Tribunal pourra, en outre, ordonner que le condamné sera transféré à la frontière et expulsé du territoire Tunisien.

7. Notre Premier Ministre pourra également, par mesure de police, enjoindre à tout étranger voyageant ou résidant dans la Régence, et dont la présence serait de nature à compromettre la sécurité publique, de sortir immédiatement du territoire Tunisien.

L'arrêté d'expulsion devra toutefois être contresigné par le Ministre-Résident Général.

8. Tout étranger qui se serait soustrait à l'application des mesures énoncées dans les Articles 6 et 7, ou qui, après être sorti de la Régence, y serait rentré sans l'autorisation du Gouvernement, sera puni d'un emprisonnement de un mois au moins et de six mois au plus.

Après l'exécution de sa peine il sera expulsé.

9. L'Article 463 du Code Pénal Français est applicable dans tous les cas prévus par le présent Décret.

10. Il sera accordé aux étrangers résidant actuellement dans la Régence un délai de deux mois, à courir du 1er mai 1898, pour se conformer aux prescriptions qui précèdent.

11. Notre Premier Ministre est chargé de l'exécution du présent Décret.

Vu pour promulgation et mise à exécution;

René Millet,
Ministre Plénipotentiaire, Résident-Général
de la République Française.

Tunis, le 13 avril 1898.

56.

ETATS-UNIS, CHINE.

Notification du gouvernement des Etats-Unis, concernant la délivrance de Certificats d'admission pour les Immigrants chinois; signée à Washington, le 22 septembre 1898.

State Papers. V. XC.

Treasury Department, Washington,
September 22, 1898.

To Collectors and other officers of Customs:

Attention is called to the appended opinion, dated the 31st ultimo, of the Honourable the Acting Attorney-General, wherein it is held that there is no authority in existing laws under which Consular officers of China in foreign countries may issue to Chinese subjects of the exempt classes the certificates prescribed by section 6 of the Act approved 5th July, 1884, relating to the exclusion of Chinese. The practice which has heretofore obtained of accepting such Consular certificates will be discontinued, and Chinese subjects of the permitted classes coming into the United States from China must produce certificates from the Government of China; and those coming from other foreign countries, in which they are residents, must produce, under the Treaty of 1894,*) the certificates of the Governments of such countries and not the certificates of Consular, Customs, or other subordinate officers of China. All rulings heretofore made in conflict with the foregoing are hereby revoked.

L. J. Gage, Secretary.

Department of Justice, Washington,
Sir, August 31, 1898.

I have the honour to acknowledge the receipt of your communication of the 23rd July, 1898, in which you invite my attention to the opinion of my predecessor, dated the 8th January, 1894 holding that certificates issued by Consular officers of China in a foreign country are certificates contemplated by section 6 of the Chinese Exclusion Act of the 5th July, 1884; and to the opinion of my predecessor, dated the 20th May, 1896, holding that under the Treaty with China of the 17th March, 1894, the certificates in question must issue from the proper authorities of the foreign Government where Chinese subjects of the privileged classes, applicants for admission to the United States, last resided; and in which, finally, in view of the foregoing, you request my opinion as to the authority of Consular officers of China in foreign countries to issue the certificates prescribed in section 6 of the said Act of 1884.

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*) V. N. R. G. 2e s. XXI. 640.

It is fairly to be assumed that the Chinese persons, whose case we are to consider in this review, are those of the classes privileged to be admitted into the United States, who are subjects of China, resident in some other foreign country. The Treaty referred to regards, in this connection, only „Chinese subjects“ in terms and by necessary intendment; and the opinion last cited expressly relates to Chinese subjects alone. The Act of 1884 embraces Chinese persons who are subjects of other foreign Governments as well as those who are Chinese subjects; but the opinion first cited, construing section 6 of this Act, necessarily has in view only the latter class, since it may hardly be doubted that under this section it was, and is, requisite that Chinese persons entitled to admission to the United States, being subjects of some other foreign Government than that of China, must produce a certificate issued by the proper officials of such Government and not by those of China. At all events, the question as it affects Chinese persons, other than Chinese subjects, is beyond the scope of our inquiry, and we may therefore dismiss that branch of the case. In any view, it is reasonable to conclude that if the determination reached by me is that Consular officers of China in a foreign country are not authorized to issue to Chinese subjects resident therein the certificates prescribed by the Act of 1884 à fortiori, such Consular officers are not authorized to issue these certificates to Chinese persons who are the subjects of such other foreign country.

Section 6 of the Act of the 5th July, 1884 (23 Stats., 115), provides that

„ . . . . every Chinese person other than a labourer, who may be entitled by said Treaty (the Treaty of 1880) or this Act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign Government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government.“ . . . .

The opinion first cited herein construing the language of this section that the „permission“ and „identification“ of the Chinese person shall be „evidenced by a certificate issued by such Government,“ reaches te conclusion that certificates accurately conforming to the requirements of section 6 and issued by Consular officers of China in a foreign country, duly empowered by the Chinese Government, are valid. The words of the Act, „such Government“, point to the „Chinese Government or . . . . such other foreign Government of which at the time such Chinese person shall be a subject.“ This language is to be taken distributively rather than as allowing an alternative source for the certificate, either to Chinese subjects or to persons of Chinese descent who are not Chinese subjects, and hence the conclusion of the opinion in question quite clearly implies, as before indicated, an application only to subjects of China resident in another foreign country.

The situation was changed by Article III of the Convention of 1894 between the United States and China (28 Stats., 1210), which reads:

. . . . „To entitle such Chinese subjects as are above described to admission into the United States, they may produce a certificate from their Government or the Government where they last resided visod by the Diplomatic or Consular Representative of the United States in the country or port whence they depart.“ . . . .

My predecessor was of the opinion that the provisions of this Article of the Treaty of 1894 are self-executing, and are a part of the supreme law of the land; and he holds, in effect therefore, that while prior to the Treaty of 1894 a certificate from the foreign authorities as to privileged Chinese subjects resident within a foreign jurisdiction would have been insufficient, and a certificate from the Chinese Government or its accredited Consular officials would have been necessary, the Treaty being subsequent to the Act of 1884 has modified the requirements thereof, so that the certificate must now be issued in such cases by the foreign Government and not by officials of China. This opinion evidently regards the Treaty as mandatory on this point, and suggests no alternative under which such an applicant for admission might properly produce either the certificate of Consular officials of China or the certificate of the foreign Government. I concur in this reasoning and conclusion. There is no fundamental inconsistency or repugnancy between the Act and the Treaty, nor between the opinions of my predecessors considering them respectively, nor has any radical change in procedure resulted from the partial modification of the Act by the Treaty. The certificate is the same in its contents an incidents, but the source from which it issues in the case which we are considering has been transferred from the Chinese Government to the foreign Government of residence. The whole scope of the question may be summarized as follows:

Chinese subjects of the permitted classes coming into the United States from China must produce the certificate of the Government of China, and coming from other foreign countries in which they are residents, must now produce, under the Treaty of 1894, the certificate of the Government of such countries, and not, as under the Act of 1884 the certificate of Consular or other proper officials of China. It lies beyond our inquiry, as I have intimated, to determine whether, granting that under the Act of 1884 the certificate of a Chinese person being the subject of another foreign Government must be issued by that Government when he comes from its jurisdiction into the United States, it should be issued by that Government or by the Government of residence when he resides elsewhere and proceeds therefrom to the United Staates. To such Chinese persons the Treaty of 1894 does not legally extend, and it has not been determined, so far as I am aware, whether as to them the test of relation as subject or citizen indicated by the Act of 1884 or the test of residence by an equitable application (so to speak) of the principle of the Treaty, is to be invoked. It may be that this latter

question is not of practicable moment at present, or that you have already in the regulations and practice of your Department disposed of it.

I therefore respond to your request by stating that, in my opinion, there is no authority to be derived from our existing laws granting to Consular officers of China in a foreign country the right to issue the certificates prescribed by section 6 of the Act of the 5th July, 1884.

Very respectfully,

Jas. E. Boyd, Acting Attorney-General.

The Secretary to the Treasury.

57.

HONDURAS, NICARAGUA, SALVADOR, GUATEMALA, COSTA-RICA.

Documents, traités et correspondance concernant la formation et la dissolution de la Grande République de l'Amérique centrale; du 20 juin 1895 au 10 décembre 1898.

State Papers. T. 92.

(Translation.)

Their Excellencies the Presidents of the Republics of Salvador, Nicaragua, and Honduras, Generals Rafael A. Gutierrez, J. Santos Zelaya, and Dr. Policarpo Bonilla, being assembled with the important object of coming to an agreement for the purpose of choosing the means for the establishment on a permanent basis of the peace of Central America and for the realization of the great ideal of the reconstruction of the former nationality, and of putting at once into practice everything that they consider easy of execution until the same can be completely realized, they have nominated their respective Ministers of Foreign Affairs, Drs. Don Jacinto Castellanos and Don Manuel C. Matus, and of Public Works, Dr. Don Constantino Fiallos;

Who, after having exchanged their full powers, and having found them in due form, have agreed upon the following:

Art. I. The Republics of Salvador, Nicaragua, and Honduras shall constitute henceforth a single political entity for the exercise of their external sovereignty under the denomination of the „Greater Republic of Central America".

This denomination shall continue until the Republics of Guatemala and Costa Rica voluntarily accept the present Agreement, in which case it shall be called the „Republic of Central America".

II. The Signatory Governments do not by the present Agreement renounce their autonomy or independence as regards the management of internal affairs; and the Constitutions and accessory laws of each State shall remain in force, so far as they are not opposed to the present stipulations.

III. In furtherance of the agreement in Article I, there shall be a Diet composed of one member of full right and one deputy member elected by each of the Legislatures of the Signatory Republics for a term of three years.

The Resolutions of the Diet shall be by majority of votes, and for its intercourse with the other Governments it shall annually elect from among its own body one who shall serve as the medium of communication.

The Diet itself shall have the faculty of issuing the requisite Regulations for the exercise of its functions.

IV. The principal attributes of the Diet shall be to preserve the greatest harmony with all the nations with whom the Signatory Republics maintain friendly relations, entering for that purpose into such Treaties, Conventions, or compacts as may conduce to that end.

In every Treaty of Friendship which the Diet may celebrate, there shall be expressly inserted the clause that all questions which may arise shall be decided invariably and without exception by means of arbitration.

V. Whilst there is no General Assembly in existence, the ratification of Treaties appertains to the Legislatures of each of the Republics, the same being considered ratified when they are agreed to by a majority.

Likewise when the Diet shall have to dictate any measure affecting the general interests, it shall act in accordance with the opinion of the majority.

VI. All questions now pending, or that may hereafter arise between the Signatory Republics and any other nation shall be discussed by the Diet, in conformity with the notes and instructions furnished to it by the Governments concerned.

VII. In case of its not being possible for the Diet to settle the question pending in an amicable manner, nor to procure that it be submitted to arbitration, it shall make a report to all the Governments, so that, in accordance with what the majority may determine, it shall according to circumstances accept or declare war.

VIII. If unfortunately a question should arise between the Signatory Governments, the Diet shall constitute itself a Tribunal of Arbitration, in order to decide the difficulty in view of the proofs and pleadings which the Governments concerned may present to it.

But if any one of these should not conform to the award, they shall be obliged to nominate by common consent an Arbitrator, who shall pronounce a final decision in view only of the antecedents and of the Resolution of the Diet.

In case they cannot come to an agreement as to the appointment of an Arbitrator, he shall be nominated by the Diet, and chosen from amongst the Presidents of the remaining American Republics.

IX. The principal object of the present Convention being to preserve peace and the closest harmony between the Contracting Republics as the most efficacious means of realizing the Union, their respective Governments pledge themselves in the most formal and solemn manner to comply with the stipulations contained in the previous Article within the limits on which the parties may agree, or which in default the Diet may establish.

X. The appointment of the Diplomatic and Consular Agents of the Greater Republic of Central America appertains to the Diet, as also the reception and acceptance of those accrecited to it.

XI. The arms and the flag of the Greater Republic of Central America shall be those of the former Federation.

XII. The Diet shall reside alternately one year in each of the capitals of the Contracting Republics, deciding by lot the order of residence.

XIII. The salaries of the members of the Diet shall be fixed by their respective Governments, and the General expenses shall be divided in equal parts.

XIV. During the three years, or earlier if possible, the Diet shall draw up a project for the definitive union of the Signatory Republics in the form it may judge most suitable, and shall send a report thereof to a General Assembly composed of twenty members chosen by each of their Legislatures, immediately after the Diet has notified to the Governments that the project referred to has been settled.

The Assembly shall meet in the place of residence of the Diet, and shall be installed when two-thirds at least of the members nominated have presented themselves.

XV. Each of the Signatories shall inform the Governments of Guatemala and Costa Rica of the present Convention, appealing to them to give their adhesion to its stipulations.

XVI. Having been ratified by the Legislatures of the Signatory Republics, the exchange shall take place in either of the capitals, one month after the last ratification, it being agreed that the expiration of the said term does not imply the abandonment of the Treaty, and that consequently the exchange may take place at any time.

XVII. The same Assembly that ratifies the Convention shall proceed at once to the election of the members of the Diet corresponding to it, so that it may commence to exercise its functions, at the latest, within three months from the date of the verification of the exchange of ratifications.

In testimony of which the undersigned Ministers sign and seal with their respective seals this Convention, in duplicate, in the port of Amapala, on the 20th day of the month of June, in the year 1895, and 74th of the Independence of Central America.

(L. S.) *Jacinto Castellanos.*
(L. S.) *M. C. Matus.*
(L. S.) *E. Constantino Fiallos.*

(Translation.)

The Governments of Guatemala, and Costa Rica, and of the Greater Republic of Central America, through their respective Plenipotentiary Delegates, namely:

The licentiates, Don Antonio Batres Jauregui, Don Mariano Cruz, and Don Antonio Gonzalez Saravia, for Guatemala; the licentiate Don Leonidas Pacheco for Costa Rica; and Drs. Don Tiburcio G. Bonilla and Don Manuel Delgado for the Greater Republic of Central America:

In the desire that the Union of Central America should be effected as soon as possible and in a definitive manner, for the immediate extension of their mutual political relations, and unified from to-day as regards foreign nations; and in view of the fact that the States above mentioned possess harmonious bases of legislation, identical guarantees, and homogeneous principles of liberty, order, and progress; after having exhibited their full powers, found to be in due form, and after conferences and discussions of the matter, have agreed upon the following stipulations:

Art. I. The Republics of Guatemala, Costa Rica, Nicaragua, Honduras, and El Salvador form henceforth one sole free and independent nation called the Republic of Central America.

II. The Signatory Republics forming this new political entity reserve their entire liberty and independence excepting upon those points expressed in this Treaty and in connection with which they must be considered a single nation.

III. They retain their autonomic system in regard to their internal administration; their union having for its one object the maintenance in its international relations of a single entity in order to guarantee their common independence, rights, and due respect.

IV. With this object the Republic, which, in the future will be called States, agree to organize an Executive National Power, the head of which will have the character of President of the Republic of Central America.

V. The Presidents of the present Republics will be styled „Chiefs of State."

VI. The Presidency of the Republic of Central America will be occupied alternately in turn by the respective Chiefs of State in the alphabetical order of the nations, thus: Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador.

VII. These terms of office will be for one year, commencing on the 15th September of this year, if by that date this Treaty shall have received definitive approval; if not, then at a date fixed by a majority of the States.

VIII. The President of the Republic of Central America will be assisted by a Council composed of two Delegates from each State, who will hold the position of responsible Ministers.

IX. The abstention or absence of any of the said Delegates, providing that an absolute majority still remains, shall be no obstacle to the deliberations and resolutions of the Council.

X. In order to authorize the acts of the Council, and to be the organ of communication, the President of Central America will designate one of the members of the Council to assume the duties of Secretary of State.

XI. The Councillors will be elected for one year by the Executive of each State, and may be re-elected.

XII. In all matters affecting the external policy of Central America the President must proceed to consult the Council, and must conform to the vote of the majority present. The vote of the President shall be decisive in the case of an equality of votes.

XIII. The attributes of the President of Central America with the consent of the Council are:

a) To defend the independence and the honour of the nation and the inviolability of its territory.

b) To respect the stipulations of this Treaty and to see that they are respected by the States.

c) To obtain by pacific means the maintenance of order in the States.

d) To fix, when necessary, the mode and the resources with which each of the States should contribute to the defence of the territory and of the national honour.

e) To appoint Diplomatic Ministers, Consuls, and Consular Agents.

f) To receive the Ministers and other Envoys of foreign nations, and to grant exequaturs to the commissions of foreign Consuls.

g) To cultivate and develop international relations.

h) To issue passports to the Ministers and Envoys of foreign nations, and to withdraw the exequaturs of Consuls in cases provided for by law.

i) To fix the amount and the manner in which the States shall share in the common expenses.

j) To maintain harmony between the States.

k) To conclude and ratify Treaties of Peace, Friendship, Commerce, Navigation, and Extradition, or Conventions, Contracts, and Stipulations touching the general interests of Central America, it being his duty to submit to the Assembly of the State concerned such matters as affect the individual interests of that State, or which have been made at its instance.

l) To obtain the highest possible extension of the ways of communication between the States, and likewise of the maritime commerce of its coast.

m) To obtain in as short a time as possible the unification of moneys, weights, and measures under the decimal system, a Fiscal and Customs Union, and uniformity in the educational system.

XIV. The Council is also authorized to develop in its labours the bases conducing to the unification of the interests of Central America, principally in the matter of legislation.

XV. Diplomatic and Consular representation will, in future, be made in the name of the Republic of Central America.

XVI. In exercising the attribute referred to in paragraph (e) of Article XIII care will be observed that the representatives shall be selected equitably from the various States.

XVII. It is understood that should a State require Diplomatic or Consular representation on its own account, such will be selected with the personnel as indicated by that State.

XVIII. It shall be the principal duty of the Council to maintain fraternal good feeling between the States, and should their good offices not attain the desired end, the proceeding of arbitration shall in all cases be resorted to.

XIX. It is recognized that this Treaty has no ulterior object beyond the endeavour to attain a definitive reorganization of the Central American nation, and that, in consequence, no other preference shall be taken into account nor any other interpretation be placed upon its clauses beyond that which conduces to this end, by pacific means and for mutual convenience.

XX. The Republic of Central America shall be considered as organized, provided more than one State takes part in its formation; and the rejection of one or any of the clauses herein contained shall not prevent the State rejecting them from forming part of the Union as long as, in the opinion of the Executive Council, this Convention is not essentially affected thereby.

XXI. A native of any one of these States shall not be considered as an alien in another and will enjoy the same privileges as a native there, provided he signifies his desire to do so before the Civil Registrar.

XXII. The civil and political rights of the Central American who has complied with the conditions laid down in the preceding Article shall be regulated in accordance with the law of the State in which he resides, in respect of the acts therein performed.

XXIII. Consequently, the option referred to in Article XXI will give them the character of natural-born citizens, and domicile will include all the rights and duties of parishioners („vecindad") without any exception whatever.

XXIV. The documents issued by any functionary, provided they are lawful, shall have force in any of the States in conformity with its laws; but in the matter of professional titles it will be necessary to possess a licence also.

To exercise the profession of a lawyer, it will be necessary to fulfil the special requiremts of the laws of the State.

XXV. The States of Central America will make common cause in international questions affecting their sovereignty and independence.

XXVI. The assistance one State gives another in such a case shall be at the cost of the State rendering such assistance.

XXVII. The President of the Republic of Central America, in conjunction with the Executive Council, will determine the manner of rendering, and the kind of assistance to be rendered, in order to insure unity of action.

XXVIII. The supreme command of the forces will be in the hands of the State in which such forces happen to be, unless the President of this Republic should himself assume command.

The assistance must be given at the place of the conflict.

XXIX. In such cases all that relates to peace shall be determined by the National Executive.

XXX. Peace between the States of Central America shall be guaranteed by the recognition of the principle of non-intervention. This will not prevent the spontaneous and reciprocal assistance which the States will afford one another for maintaining peace when required of them.

XXXI. Consequently no Chief of State may interfere, of his own motion, in any way in the questions of the internal affairs of another State.

XXXII. In compliance with Article XVIII, when one State considers itself threatened or injured by another, it will forward to the Executive Council a Memorandum, in which it will give details of the pending conflict and offering all the necessary explanations. During such time the matter will remain in statu quo.

XXXIII. The version of the second party having been heard, and the conciliatory intervention of the Executive Council not having proved satisfactory, the parties will be informed that, within a fixed period, they shall name an Arbitrator.

In case of disagreement this shall be done by the Council. For action to be taken in such matters, it shall be deemed sufficient for the Council to be formed of members having no direct interest in the question; and should the President be obliged to abstain, the members shall elect by majority the individual, who shall hold a double vote in case of both sides being equal. The arbitral award shall be final.

XXXIV. No State shall authorize or consent to acts of hostility within its territory against any of the others.

XXXV. The surrender of political fugitives will be made without further formalities than the demand of the Government interested.

XXXVI. The right of asylum is inviolable both in the States and in the Republic, except in such cases provided for by Treaties of Extradition.

XXXVII. The pecuniary or other obligations contracted, or which may be contracted in the future, by any of the States are matters of individual responsibility.

XXXVIII. In order that in the Constitutions of the States the same political spirit should predominate, so as to facilitate their permanent union, the following bases of Constitutional public rights shall be established:

a) The separation of Church and State and the absolute respect of creeds;

b) The liberty of the press without censorship. Press offences shall remain subject to the recognition and repression by the Tribunals;

c) The liberty of bequest, with the sole restriction that special laws fix as regards heritages and legacies in favour of religious institutions and for necessary alimony;

d) The inviolability of human life in respect of political crimes;

e) Absolute equality of civil rights of man and woman;

f) The purely civil character of the Acts which establish or modify the civil status of persons; the same shall, however, be no impediment to any religious ceremony;

g) The abolition of all entail or mortmain, excepting such as may have some charitable object or shall be in favour of public instruction;

h) The guarantee of the habeas corpus;

i) The inviolability of property, excepting in case of appropriation for public needs and uses, legally proved, and with previous indemnification. In case of war, however, the latter obligation will not be necessary;

j) The absolute independence of the Legislative, Executive, and Judicial Powers;

k) The inviolability of the person, except in cases of crime or offence, the detention for inquiry not lasting longer than five days;

l) The non-retroactive effect of the law, except in penal cases when this may be of benefit to the accused;

m) Neither confiscation nor torture is permitted;

n) The right to petition, either individually or collectively, is recognized;

o) The right of peaceable meeting, unarmed and for lawful purposes, is recognized;

p) The right of defence is inviolable;

q) Every citizen has the right to choose his domicile, and to leave and enter the country, except in case of being subject to responsibilities;

r) The inviolability of domicile, which may not be entered by force, excepting in such cases and with the formalities prescribed by law;

s) In no case can private papers belonging to the inhabitants of the Republic be detained or examined, excepting by order of a competent Judge;

t) Education is free excepting the restrictions which morality requires; but that which is provided in establishments supported by the Government is secular and gratuitous, and primary instruction free and compulsory;

u) Equality before the law.

XXXIX. The declaration of these principles does not prevent any State including in its Constitution those it may judge convenient.

XL. Former Treaties entered into by the States shall still remain in force in so far as they are not opposed to the present Treaty.

XLI. The Executive Council, after the lapse of five years, or sooner if possible, will convoke a National Assembly to decide upon the definitive Constitution of the Republic of Central America.

The said term may be deferred by the choice of the Executive Council. The National Assembly shall be composed of ten representatives for each State and five substitutes.

XLII. The coat-of-arms and flag of Central America shall be those of the former Federation.

The present Treaty will be submitted to the Assemblies and constituents which will be convoked by each State, in order to obtain the ratification of this Treaty before the 15th September next. If, however, on that date some or all of the ratifications should be wanting, this will not invalidate the stipulations agreed upon.

This Agreement will be considered accepted without the necessity of exchange from the day upon which all the Governments of Central America shall have signified the approval of their respective Assemblies.

In virtue whereof the undersigned Plenipotentiaries have signed and sealed in triplicate, at Guatemala, the 15th June, 1897.

(L. S.) *Antonio Batres.*
(L. S.) *Mariano Cruz.*
(L. S.) *A. G. Saravia.*
(L. S.) *L. Pacheco.*
(L. S.) *T. G. Bonilla.*
(L. S.) *Manuel Delgado.*

(Extract.) Tegucigalpa, Dezember 3, 1898.

The Federation recently formed by the Republics of Nicaragua, Honduras, and Salvador, under the name of the United States of Central America, has ceased to exist.

This idea was initiated in a Treaty of Union signed at Amapala on the 20th June 1895, since which date until the 1st November last all international questions affecting the three Republics have been in the hands of a Diet consisting of three members. In the month of June of this year a Constitutional Congress was assembled in Managua and adjourned at the end of August, having framed a Constitution for the new Republic, and named a Provisional Government of three persons to act as the Chief Executive Power until such time as a President should be elected, the present month being the time fixed for the election.

A successful revolution in Salvador broke out on the 13th November, and the new President Tomas Regalado declared himself opposed to the union.

Nicaragua refused to co-operate with Honduras in obliging Salvador to adhere to the agreement entered into by her unseated President, and

thus the Provisional Government has been forced to declare the Federation dissolved.

The office of Minister of Foreign Affairs has been re-established here.

Colin W. Campbell.

Mr. Merry to Mr. Hay.

Legation of the United States, San José, Costa Rica,
Sir, Dember 1, 1898.

I have the honour to inclose herewith copy and translation of official telegram received this morning by the Government of Costa Rica announcing the final dissolution of the newly-formed United States of Central America by the Executive Council thereof.

With assurances, &c.,

William Lawrence Merry,
United States' Minister.

Inclosure.

Telegram deposited in Amapala, November 29, at 12.40 P.M. —
Received in San José, November 30, at 9.20 A.M.

(Translation.)

To the Minister of Foreign Relations:

With real regret I fulfil the duty of advising your Excellency that the Executive Federal Council has decided to-day to declare that the existence of the Republic of the United States of Central America is dissolved, and consequently not being able to continue in the exercise of its functions. I will send to your Excellency separately the documents justifying such an important resolution taken as an unavoidable necessity in consequence of the important events in Salvador. Central American patriotism feels injured in its most legitimate interests, and leaves the responsibility to those who insisted on destroying their work.

On leaving my post I have the honour to repeat to your Excellency the protestations of my consideration and respect.

J. Sansón.

Mr. Merry to Mr. Hay.

Legation of the United States, San José, Costa Rica.
Sir, December 2, 1898.

Respectfully referring to my despatch dated the 1st instant, I have the honour to advise that the Government of Costa Rica has officially recognized the Regalado anti-Federal Government of Salvador. Guatemala has not, so far as I am advised, taken like action, but is expected to do so soon. I have inclosed herewith telegram just received from Honourable Erasmo Calderon, Minister of Foreign Affairs of the newly-habilitated Republic of Nicaragua, which is self-explanatory, and follows the Procla-

mation of President Zelaya, dated the 30th November, announcing the resumption of her sovereignty as a Republic. I have already advised that the Government of Honduras has recognized the new Government of Salvador.

I have, &c.,

William Lawrence Merry,
United States' Minister.

Inclosure.

Telegram deposited in Palace, Managua, December 1, 1898, at 6.20 P.M. — Received in San José, December 2, 1898, at 3 P.M.

(Translation.)

United States' Minister,

I have the honour to advise your Excellency that, by Decree of my Government of this date, Nicaragua has assumed the full sovereignty of a free and independent Republic through the dissolution of the Federal Republic of the United States of Central Amerika to which it belonged, the Ministry of Foreign Relations being re-established. In communicating to your Excellency the foregoing, I have also the satisfaction of advising you that I have taken charge of that important post by disposition of the President, and that in it I will second the decided intention of my Government to continue cultivating with that of your Excellency the most frank and cordial relations for the mutual interest of both countries. While I may be at the head of such an important department I shall have the pleasure of maintaining the most sincere friendship with your Excellency.

With all consideration, &c.,

Erasmo Calderon.

Mr. Merry to Mr. Hay.

Legation of the United States, San José, Costa Rica,
December 10, 1898.

Sir,

I have the honour to inclose herewith documents which may be of interest in connection with the dissolution of the newly-formed Estados Unidos de Centro America.

With assurances, &c.,

William Lawrence Merry,
United States' Minister.

Inclosure 1.

Executive Power. — General Ministry.

(Translation.)

Considering that the compact of Amapala, celebrated in June 1895, and all that proceeds thereform, has not obtained the legitimate sanction of the Salvadoran people, and, moreover, has been a violation of the

political constitution of Salvador; that in the assembled constituent assembly of Managua, reunited in June of the present year, the deputies of Salvador were not directly elected by the Salvadorean people, and for that reason had no legal authority to concur in a constituent law that could bind the Republic; that the union with the Republics of Honduras and Nicaragua under the terms agreed upon will seriously injure the interests of Salvador, it is decreed:

Art. 1. The Republic of Salvador is not obliged by the Contract of Amapala to acknowledge any authority in the constitution of Managua of the 27th August of the current year, and is released from the contract of union with the Republics of Honduras and Nicaragua.

2. The Republic of Salvador assumes in full its self-government and independence, and will enter into the union with the sister Republics of Central America when the same is convenient to its positive interests and is the express and free will of the Salvadorean people.

Given at the Executive Palace, 25th November, 1898.

T. Regalado, General of Division, and Provisional President of the Republic of Salvador.

E. Aranjo, General Minister.

Inclosure 2.

Circular from the General Ministry.

(Translation.) San Salvador, November 30, 1898.

Señor Governor of the Department, present:

You will please make public the following:

Peace in the Republic is now a real and positive fact, without fear that any one may be able to disturb it. The Federal Council was dissolved yesterday in Amapala through want of assistance.

The Republics of Nicaragua and Honduras have assumed, like Salvador, their autonomy and independence, and we have now frank and friendly relations with their respective Governments. The Government of the country occupies itself now in dispersing its troops, keeping only those needed for the conservation of public order. All Salvadoreans can now quietly devote themselves to their industries, and, without distinction, may be certain of enjoying every guarantee; and the Government is determined to preserve the peace, in order that it may bring prosperity to the country and well-being for all.

Your obedient servant,

E. Aranjo.

Inclosure 3.

Decree issued at Managua, December 1, 1898.

(Translation.)

Inasmuch as the Federal Executive Council, installed at Amapala on the 1st ultimo, has declared, by Act of the 29th of same month, the

Republic of the United States of Central America dissolved, the State of Nicaragua is obliged thereby to reassume its sovereignty, therefore, the Council of Ministers decrees:

1. Nicaragua assumes her full sovereignty as a free and independent Republic, and, in consequence, the Constitution of 1893, with the Reforms of 1896, will continue in force throughout.

2. The Department of Foreign Relations is re-established and annexed to that of Gobierno (Interior).

3. All danger of peace and public tranquillity not having yet disappeared, the martial law in force prior to the 1st November last remains in force.

4. This Decree shall be reported at the next assembly of the National Legislature and will take effect from its publication.

J. S. Zelaya,

(Signed also by Ministers of the Departments of Interior, Treasury, Instruction, and Public Works.)

Mr. Merry to Mr. Hay.

Legation of the United States, San José, Costa Rica.
December 29, 1898.

Sir,

Herewith I have the honour of inclosing a translated and Spanish copy of a communication from the late „Executive Federal Council", of the late United States of Central America, officially announcing its dissolution, and stating some of the causes that lead thereto. Although you have been already informed of the facts therein stated, the communication is respectfully forwarded to the Department of State, as therein requested.

With assurances, &c.,

William Lawrence Merry,
United States' Minister.

Inclosure.

Señor Sansón to Mr. Merry.

(Translation.)

Executive Federal Council of the United States of Central America, Amapala,
November 29, 1898.

Sir,

The Executive Federal Council was inaugurated in this city on the 1st instant, putting into force the political Constitution of the United States of Central America, decreed by the Constituent Assembly of Managua the 27th August of this year. This political entity was born to national life with the spontaneous assembling of the Governments of the States of Nicaragua, Honduras, and El Salvador as signatories of the pact of Amapala, which has been the chief generator of the idea of union, and with the

assistance of public opinion frankly expressed through the organs of the press of the greatest authority, and by the majority of the political associations of these States.

It seemed as if the work of national union, so long desired by Central American patriotism, was to be consolidated, presenting in the lap of peace the fruit of order and liberty. The Council complied scrupulously with the mandate of the law, and its first work of organization was directed in the straight path of justice, keeping in view the peculiarities of these countries in order not to offend for a moment the customs of many years; but before entering upon the full exercise of its functions and taking into its hands the means of public administration corresponding to its constitutional position, it was surprised by the cry of revolt which the barracks of the State of Salvador raised against it, proclaiming as supreme head General Tomás Regalado, who declared dissolved the Federal Republic in the name of the people of Salvodor, who submitted through the force of arms to his will.

As soon as it had knowledge of this event the Executive Federal Council exerted itself to suppress the movement of revolt, and in this noble effort employed all the means that patriotism could under the circumstances demand.

Unfortunately events took place with great rapidity; many military commanders in the service of the Federation failed in their duty and weakened the prompt and timely action of the Council, and in consequence the State of Salvador remained de facto separated from the union of the Republic.

In presence of occurrences so serious that the Council found it impossible to overcome them for rof reasons given, and through the circumstance of its recent installation, it not being permissible to remove many of the military commanders who were not in its confidence, the Council has seen itself under the painful necessity of declaring the Republic of the United States of Central America dissolved, and being unable to continue in the exercise of its powers, the Council declines in its person the responsibility of the rupture of the Federation.

Upon bringing the foregoing to the knowledge of your Excellency, in order that you may duly place it before your Government, I have the honour to repeat the assurances of my highest esteem, &c.,

J. Sansón.

Señor Sansón to Mr. Hay.

(Translation.)

National Palace, Managua, December 5, 1898.

Mr. Secretary,

I have the honour herewith to transmit to your Excellency the autograph letter which is addressed by his Excellency General President Zelaya to his Excellency the President of the United States of America, informing him of the political change which took place in Nicaragua on the 1st instant.

Begging your Excellency to forward the autograph letter in question to its high destination, I offer you the assurance of my most distinguished consideration.

Your Excellency's faithful and obedient servant,

J. Sansón.

Inclosure.

Señor J. Santos Zelaya, General of Division and Constitutional President of the Republic of Nicaragua, to his Excellency the President of the United States of America.

(Translation.)

Great and Good Friend,

The military occurrences which have taken place in the State of Salvador since the 13th ultimo have put an end to the Federal Republic of the United States of Central America, and the Executive Council which represented it was obliged, on the 29th of the same month, to declare the de facto separation of the Signatory States.

The result of this situation has been that Nicaragua, an integral part of the Federation, has recovered her absolute sovereignty as a free and independent nation, and has adopted her former name of a Republic, governed by democratic institutions.

While the end of this new attempt to form a Federation, which was so greatly desired by all Central American patriots, is to be lamented, I entertain the firm conviction that the antecedents of this country and those of my Government in its relations with other nations, and especially with the United States, will render it possible to re-establish those relations in a satisfactory manner, and to strengthen them on a footing of the sincerest and most advantageous cordiality.

My Government will spare no pains to promote the accomplishment of these desires, and I avail myself of this occasion to inform you that the people and Government of Nicaragua feel the most lively sympathy for your country, and earnestly desire its further progress and prosperity.

With the sincerest wishes for the peace and well-being of the United States, and for your own personal happiness and welfare, I beg you to accept the assurance of my most distinguished consideration.

Your faithful friend,

J. Sansón. *J. S. Zelaya.*

Done at the National Palace of Managua, on this 5th day of the month of December, 1898.

Señor Aranjo to Mr. Hay.

General Ministry, Republic of Salvador, Central America,
Palace of the Executive,
San Salvador, December 5, 1898.

(Translation.)

Sir,

I have the honour to inform your Excellency that a political evolution took place in this country on the 14th November last, which was designed

to re-establish the autonomy and independence of this Republic, breaking, to this effect, the bonds of Union with the neighbouring Republics of Nicaragua and Honduras. That movement, which was in harmony with public opinion and seconded by all Salvadoreans, has called a new Government into existence under the provisional Presidency of General Tomas Regalado, of which the Undersigned is Minister-General; this Government has been spontaneously recognized by the whole country, which is in the full enjoyment of peace and tranquillity.

In consequence of the aforesaid event, the Executive Federal Council that represented the ephemeral political entity which was called the United States of Central America was dissolved at Amapala by an instrument bearing date the 29th November; the Governments of Nicaragua and Honduras have likewise thereby recovered their independent existence, and the separation of this from those Republics has been completed, all three having resumed their former amicable relations. The Republic of Salvador has, therefore, fully reassumed its autonomy and independence, and has begun once more to form by itself part of the great family of nations, and it desires to re-establish its relations of friendship with those nations with which it had the honour formerly to sustain them. I consequently have the honour to address your Excellency for the purpose of informing you that the new Government of Salvador earnestly desires to maintain and cultivate the most cordial relations of friendship with the Government of the United States of America.

Your Excellency will find inclosed two copies of the Official Journal, one of which contains the Decree re-establishing the autonomy of this Republic, and the other the Decree whereby the Diplomatic Ministers and Consular Corps of the Greater Republic of Central America are declared no longer to represent Salvador in foreign countries, of which fact the said officers have already been informed.

I beg your Excellency to bring the foregoing to the knowledge of your Government, and at the same time to accept, &c.,

E. Aranjo.

Señor Ugarte to Mr. Hay.

(Translation.) Republic of Honduras, Ministry of Foreign Relations,
Sir, Tegucigalpa, December 10, 1898.

In pursuance of a Treaty concluded at Amapala on the 20th day of June, 1895, the States of Honduras, Nicaragua, and Salvador delegated their external sovereignty to the Diet of the Greater Republic of Central America, which was installed on the 15th September, 1896, and assumed charge of the foreign relations of the three countries.

That Diet, according to the aforesaid Treaty of Amapala, was to cease to exercise its functions as soon as the Constitution should be adopted, whereby the three Contracting States were to unite their interests in a stable and permanent manner.

That Constitution was discussed at Managua by the Representatives of the three States, was signed on the 27th August last, and was promulgated as a law of the new political entity called „The United States of Central America".

On the 1st November last, in pursuance of the provisions of the Constitution adopted, a Provisional Executive Council was installed at Amapala for the purpose of discharging the functions of President of the Republic, pending the election by the people of the citizen who was definitively to fill that high position.

Unfortunately, a movement for separation, headed in the State of Salvador by General Tomás Regalado, and the subsequent events mentioned in the instrument of dissolution of the Council, which I have the honour herewith to inclose for your Excellency's information, resulted in a rupture of the Federation, the States which formed it resuming, in consequence, their external sovereignty under the name of Republics, and a Decree being issued here in Honduras, an authenticated copy of which I likewise inclose to your Excellency, in order that you may take note of its contents.

Having been called by the Government of this Republic to discharge the duties of Minister of Foreign Relations, I take pleasure in assuring your Excellency, in obedience to the instructions of the President, that the Government earnestly desires to continue to cultivate and daily to draw closer, if possible, the friendly relations which have happily existed, and still exist, between Honduras and the United States of America, and that it is firmly intended to do all in its power to promote the moral and material interests of both by means of a policy of sincere cordiality.

With assurances, &c.,

Angel Ugarte.

58.

GRÈCE, BULGARIE.

Arrangement destiné à régler provisoirement et d'une manière réciproque la situation des Sociétés anonymes, notamment des Sociétés d'assurances; signé à Athènes le $\frac{22 \text{ mars}}{3 \text{ avril}}$ 1899.

Le Gouvernement Princier de Bulgarie, et le Gouvernement Royal de Grèce, animés du désir de développer les rapports commerciaux entre leurs Etats respectifs, se réservant à cet effet de poursuivre incessamment la négociation d'un Traité complet et définitif de commerce, ont jugé utile de régler provisoirement et d'une manière réciproque la situation des Sociétés Anonymes, notamment des Sociétés d'assurances. Dans ce but

les Soussignés, en vertu de l'autorisation qui leur a été conférée, sont convenus de ce qui suit:

Les Sociétés Anonymes, et notamment les Sociétés d'assurances, qui sont ou qui seront constituées et autorisées suivant les lois particulières des deux pays contractants, seront reconnues mutuellement en Bulgarie et en Grèce de manière que ces Sociétés puissent y exercer tous leurs droits sans autres conditions que de se conformer aux lois du pays.

Le présent Arrangement entrera en vigueur un mois après signature, ou plus tôt si faire se peut, et il ne cessera d'être en vigueur qu'un an après la dénonciation qui en serait faite de part ou d'autre.

Fait en double expédition.

Athènes, le $\frac{22 \text{ mars}}{3 \text{ avril}}$ 1899.

(L. S.) *P. Dimitroff.*
(L. S.) *Alexandre Zaïmis.*

59.

ESPAGNE, ETATS-UNIS.

Arrangement destiné à prolonger le terme fixé dans le traité du 10 décembre 1898, pour les habitants des Iles Philippines d'exercer le droit d'Option; signé à Washington, le 29 mars 1900.

State Papers. V. XCII.

Whereas by the IXth Article of the Treaty of Peace between the United States of America and the Kingdom of Spain, signed at Paris on the 10th December 1898, it was stipulated and agreed that Spanish subjects, natives of the Peninsula, remaining in the territory over which Spain by Articles I and II of the said Treaty relinquished or ceded her sovereignty could preserve their allegiance to the Crown of Spain by making before a Court of Record within a year from the date of the exchange of ratifications of said Treaty, a declaration of their decision to preserve such allegiance;

And whereas the two High Contracting Parties are desirous of extending the time within which such declaration may be made by Spanish subjects, natives of the Peninsula, remaining in the Philippine Islands;

The Undersigned Plenipotentiaires, in virtue of their full powers, have agreed upon, and concluded the following Article:

Sole Article. The period fixed in Article IX of the Treaty of Peace between the United States and Spain, signed at Paris on the 10th day of

December 1898, during which Spanish subjects, natives of the Peninsula, may declare before a Court of Record, their intention to retain their Spanish nationality, is extended as to the Philippine Islands for six months beginning the 11th April 1900.

In witness whereof the respective Plenipotentiaries have signed the same, and have thereunto affixed their seals.

Done in duplicate at Washington, the 29th day of March, in the year of our Lord, 1900.

(L. S.) *John Hay.*
(L. S.) *Arcos.*

60.

GRANDE BRETAGNE, JAPON.

Convention concernant la protection réciproque des successions des ressortissants des deux pays; signée à Tokio le 26 avril 1900.*)

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Majesty the Emperor of Japan, being equally desirous of maintaining the relations of good understanding, which happily exist between them, by laying down rules for the protection of the estates of deceased persons, have agreed to conclude a Convention, and for that purpose have named as their respective Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, Sir Ernest Mason Satow, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, and His Majesty the Emperor of Japan, Viscount Aoki Siüzo, Junii, First Class of the Imperial Order of the Rising Sun, His Imperial Majesty's Minister of State for Foreign Affairs;

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

Art. I. Whenever a subject of one of the High Contracting Parties shall die within the dominions of the other, and there shall be no person present at the time of such death who shall be rightly entitled to administer the estate of such deceased person, the following rules shall be observed:

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*) Les ratifications ont été échangées à Tokio, le 25 octobre 1900.

1. When the deceased leaves, in the above-named circumstances, heirs of his or her own nationality only, or who may be qualified to enjoy the civil status of their father or mother, as the case may be, the Consul-General, Consul, Vice-Consul, or Consular Agent of the country to which the deceased belonged, on giving notice to the proper autorities, shall take possession and have custody of the property of the said deceased, shall pay the expenses of the funeral, and reatain the surplus for the payment of his or her debts, and for the benefit of the heirs to whom it may rightly belong.

But the said Consul-General, Consul, Vice-Consul, or Consular Agent shall be bound immediately to apply to the proper Court for letters of administration of the effects left by the deceased, and these letters shall be delivered to him with such limitations and for such time as to such Court may seem right.

2. If, however, the deceased leaves in the country of his or her decease and in the above-named circumstances, any heir or universal legatee of other nationality than his or her own, or to whom the civil status of his or her father or his or her mother, as the case may be, cannot be granted, then each of the two Governments may determine whether the proper Court shall proceed according to law, or shall confide the collection and administration to the respective Consular officers under the proper limitations. When there is no Consul-General, Consul, Vice-Consul, or Consular Agent, in the locality where the decease has occurred (in the case contemplated by the first rule of this Article) upon whom devolves the custody and administration of the estate, the proper authority shall proceed in these acts until the arrival of the respective Consular officer.

II. The stipulations of the present Convention shall be applicable, so far as the laws permit, to all the Colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to

India,
The Dominion of Canada,
Newfoundland,
The Cape,
Natal,
New South Wales,
Victoria,
Queensland,
Tasmania,
South Australia,
Western Australia,
New Zealand.

Provided always that the stipulations of the present Convention shall be made applicable to any of the above-named Colonies or foreign

possessions, on whose behalf notice to that effect shall have been given to the Japanese Government by Her Britannic Majesty's Representative at Tôkiô, within two years from the date of the exchange of ratifications of the present Convention.

III. The present Convention shall come into force immediately after the exchange of the ratifications thereof, and shall remain in force until the 17th July, 1911.

Either High Contracting Power shall have the right at any time after the 16th July, 1910, to give notice to the other of its intention to terminate the same, and at the expiration of twelve months, after such notice is given, this Convention shall wholly cease and determine.

IV. The present Convention shall be ratified, and the ratifications thereof shall be exchanged at Tôkiô as soon as possible, and not later than six months from the present date.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Tôkiô, in duplicate, this 26th day of April, 1900th year of the Christian era.

(L. S.) *Ernest Mason Satow.*
(L. S.) *Siüzo* Vicomte *Aoki.*

61.

COSTA-RICA.

Décret du Gouvernement concernant les droits de successions; signé à San José, le 6 juin 1900.

State Papers. V. XCII.

The Constitutional Congress of the Republic of Costa Rica,

In virtue of the powers vested in it by paragraph 4 of Article 94 of the Constitution

Decrees:

Sole Article. Approve Law No. 4, omitted by the Permanent Commission the 18th of last September, reforming the succession tax in favour of charities, which, with the modifications introduced by Congress, reads as follows:

Art. 1. All estates of deceased persons, whether dying testate or intestate, both Costa Ricans and foreigners will pay a charity tax, provided the net capital exceeds 500 dollars. By net capital is understood the value of the properties as per inventory, after the expenses of the funeral and the amount of the proved claims against the estate have been

deducted. In this latter sum is to be included, if the deceased was married, the portion and profits of the widow or widower.

2. The tax will be 1 per cent. on property not exceeding 50,000 dollars, and on property exceeding that amount, $^1/_2$ per cent. upon the excess.

This tax will be doubled when the inheritance does not pass to parents or children, or to husband or wife.

3. The tax must be paid in the capital of the province or district in which the deceased last resided, without reference to the situation of the properties. It will be collected by the Treasurer of the corresponding Charity Board, whose receipt alone will be accepted as a legal discharge.

4. In the Province of San José the proceeds of this tax will be dedicated exclusively to the support of the Hospital of San Juan de Dios.

In other provinces and districts they will be employed in the support of the hospital in charge of the Charity Board at the capital of the province or district.

5. The tax must be paid within six months from the date of the death of the deceased. If not paid within the six months, a fine will be imposed of 2 per cent. per month on the total amount of the tax for the time overdue.

6. Every Charity Board will elect a lawyer or representative to look after the collection of the tax.

The publication of his appointment in the official Gazette will be sufficient justification of his authority to act for the Board, and he will be considered as a party to the estate as soon as probate has been granted.

He will receive no salary, but such a percentage of the rents as the Board may assign him.

7. The Judges cannot pass any account for the distribution of the property of an estate until the voucher for the payment of the tax established by this Law is presented.

8. The Judges will be responsible if they contravene the provision of the previous Article.

9. This Law takes the place of and annuls all previous legislation treating on forced legacies to charities.

It will come into force from the day of its publication.

Transitory.

The estates of deceased persons, which have not to the present date paid the tax established by the former Law, will have a term of three months in which to do so, in accordance with the tariff, and subject to the penalties fixed by the previous Law. Nevertheless, if this term be allowed to pass without payment being made, they will then begin to incur the fine established by the present Law, of 2 per cent. per month upon the total amount of the contribution.

To the Executive Power.

Given in the Congressional Session Hall, National Palace, San José, the 5th day of June, 1900.

Francisco M. Iglesias, President.

62.

ESPAGNE, EQUATEUR.

Convention concernant la protection de la propriété littéraire, scientifique et artistique; signée à Quito, le 30 juin 1900.*)

Gaceta de Madrid 1905.

S. M. el Rey de España y el Excelentísimo Sr. Presidente de la República del Ecuador, igualmente animados del deseo de garantir en pueblos ya unidos por estrechos y fraternales vínculos el ejercicio del derecho de propiedad sobre las obras literarias, científicas y artísticas que en cualquiera de las dos Naciones se publiquen, han estimado conveniente celebrar un Convenio especial al efecto, y han nombrado por sus Plenipotenciarios, á saber:

S. M. el Rey de España, al Sr. D. Antonio Díaz Miranda, Su Encargado de Negocios en la República del Ecuador.

Y Su Excelencia el Presidente del Ecuador, al Sr. Dr. D. José Peralta, Ministro Secretario de Estado en el Departamento de Relaciones Exteriores,

Quienes, después de haberse comunicado sus respectivos plenos Poderes, y de haberlos hallado en buena y debida forma, han convenido en los artículos siguientes:

Artículo I.

Los autores de obras literarias, científicas ó artísticas publicadas hasta el día ó que en adelante se publiquen, gozarán en cada uno de los dos Países, recíprocamente, de las ventajas que se estipulan en el presente Convenio, así como de todas las que estén concedidas, ó en lo sucesivo se concedieren por ley en uno ú otro Estado, para la protección de las obras de literatura, ciencia ó arte.

Para la garantía de esas ventajas, la obtención de daños y perjuicios y la persecución de los falsificadores, tendrán la misma protección y el mismo recurso legal que estén concedidos ó en adelante se concedieren á los autores nacionales, en cada uno de los Países, tanto por leyes especiales

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*) L'échange des ratifications a eu lieu à Quito, le 15 novembre 1904.

sobre la propiedad intelectual como por la legislación general en materia civil ó penal.

La expresión obras literarias, científicas ó artísticas comprende los libros, folletos y cualesquiera otros escritos; las obras dramáticas ó lírico-dramáticas, con letra ó sin ella; las composiciones musicales y arreglos de música; las obras coreográficas; las obras de dibujo, pintura, escultura y grabado; las litografías é ilustraciones; las cartas geográficas; las fotografías, y especialmente los fototipos, los planos, croquis y obras plásticas relativas á la geografía, la topografía, la arquitectura, ó á las ciencias en general, y, en fin, cualquiera producción en el dominio literario, científico ó artístico que pudiera ser publicada por cualquier medio de impresión ó reproducción.

Artículo II.

Las Altas Partes contratantes se obligan á entregarse mutuamente en cada trimestre, por conducto de sus Legaciones ú otro autorizado, una lista de las obras á favor de las cuales los autores ó editores hayan asegurado, mediante las formalidades prescritas por la ley, sus propios derechos en el país respectivo.

Articulo III.

Cuando en uno de los dos países se deba presentar judicialmente la prueba de que el autor, traductor ó editor ha asegurado su derecho mediante las formalidades prescritas por la ley en el país de origen, bastará para esa prueba un certificado expedido por el Ministro de Instrucción pública y Bellas Artes, si se trata de España, y por la Secretaría de Estado de Instrucción pública, si del Ecuador, legalizado respectivamente por el Ministerio de Estado ó por el Departamento de Relaciones Exteriores, y por los correspondientes Representantes diplomáticos ó consulares, según sea el caso.

Sin embargo, si la persona que goza de la propiedad, según las leyes de un País, hubiese remitido ó remitiere al correspondiente Departamento del otro uno ó mas ejemplares de la obra motivo del procedimiento, será suficiente prueba la presentación de la obra y la comprobación de su autenticidad con la constancia en la lista oficial á que alude el primer párrafo del artículo anterior, y no habrá necesidad del envío del mencionado certificado.

De todos modos, el hecho de constar la obra en dicha lista será suficiente, cuando medie queja ó demanda de persona autorizada contra el carácter fraudulento de una publicación, para detener la circulación de ésta mientras se esclarezcan los hechos.

Artículo IV.

Las estipulaciones del art. 1.º se aplican igualmente á la representación ó ejecución en uno de los Estados de obras dramáticas ó musicales de autores ó compositores del otro País.

Artículo V.

Quedan expresamente asimiladas á las obras originales las traducciones de obras nacionales é extranjeras hechas por un autor perteneciente á uno de los dos Estados. Las traducciones gozarán por este título de la protección estipulada por el presente Convenio para las obras originales, en lo concerniente á su reproducción no autorizada en el otro Estado. Debe entenderse claramente, sin embargo, que el presente artículo tiene por único objeto proteger al traductor, en lo relativo á la versión que haya hecho de la obra original, y no conferir un derecho exclusivo de traducción al primer traductor de cualquiera obra escrita en una lengua muerta ó viva.

Artículo VI.

Los nacionales de uno de los dos países, autores de obras originales, tendrán el derecho de oponerse á la publicación en el otro País de toda traducción de dichas obras no autorizada por ellos mismos; y esto durante todo el tiempo que se les haya concedido para el goce del derecho de propiedad literaria, científica ó artística sobre la obra original; siendo así que la publicación de una traducción no autorizada equivale, bajo todos aspectos, á la reimpresión ilícita de la obra.

Los autores de obras dramáticas gozarán recíprocamente de los mismos derechos en lo relativo á las traducciones ó representaciones de traducciones de sus obras.

Artículo VII.

Se prohiben igualmente las apropiaciones indirectas no autorizadas, tales como las adaptaciones, las imitaciones llamadas de buena fe, utilizaciones, transcripciones de obras musicales, y, en general, todo uso que se haga por la imprenta ó en la escena de las obras dramáticas ó artísticas sin el consentimiento del autor.

Artículo VIII.

Será, no obstante, lícita, recíprocamente, la publicación en cada uno de los dos países de extractos ó fragmentos enteros acompañados de notas explicativas de las obras de un autor del otro país, en lengua original ó traducidos, siempre que se indique su procedencia y estén destinados á la enseñanza ó al estudio.

Artículo IX.

Los escritos insertos en publicaciones periódicas cuyos derechos no hayan sido expresamente reservados podrán ser reproducidos por cualesquiera otras publicaciones de la misma clase, pero á condición de que se indique el original de donde se copia.

Artículo X.

Los mandatarios legales ó representantes de autores, compositores y artistas gozarán recíprocamente, y bajo todos respectos, de los mismos derechos que los que la presente Convención concede á los autores, traductores, compositores y artistas.

Artículo XI.

Los derechos de propiedad literaria, artística y científica reconocidos por el presente Convenio, les serán garantizados á los autores, traductores, compositores y artistas, ó á sus causahabientes, en cada uno de los dos países durante todo el tiempo que les conceda dicha propiedad la legislación del país de origen.

Artículo XII.

Cumplidas las formalidades necesarias para asegurar en ambos Estados el derecho de propiedad sobre una obra literaria, científica ó artística, quedará prohibida su introducción, venta ó exposición en cada país, respectivamente, sin permiso de los autores, editores ó propietarios.

Artículo XIII.

Toda edición ó reproducción de una obra científica, literaria ó artística hecha sin ajustarse á las disposiciones del presente Convenio, será considerada como falsificación.

Cualquiera que haya editado, vendido, puesto á vender ó introducido en el territorio de uno de los dos países alguna obra ú objeto falsificado será castigado según las leyes en vigor en uno ú otro de los dos Países, en sus respectivos casos.

Es circunstancia agravante de la defraudación la variación del título de una obra ó la alteración de su texto para publicarla.

Artículo XIV.

Las disposiciones del presente Convenio no perjudicarán en manera alguna el derecho que corresponde á ambos Estados para permitir vigilar ó prohibir por medio de medidas de legislación ó de policía interior la circulación, la representación ó la exposición de toda obra ó producción con respecto á la cual la autoridad competente haya de ejercer este derecho.

El presente Convenio no se opondrá por ningún motivo al derecho del uno ó del otro Estado para prohibir la importación en su propio territorio de los libros que en virtud de sus leyes interiores, ó por estipulaciones acordadas con otras Potencias, sean ó hayan de ser declaradas como falsificaciones.

Artículo XV.

Queda entendido que las ventas, ejecuciones, representaciones ó exhibiciones de obras científicas, literarias ó artísticas que en virtud de este Convenio quedan prohibidas son las que se efectuaren en público ó por especulación, y no las que se llevaren á cabo por particulares sin objeto de lucro, tales como ventas hechas privadamente entre personas que no tienen por ocupación el comercio de que se trate, o ejecuciones, representaciones y exhibiciones privadas, en casas particulares, de obras literarias ó artísticas.

Artículo XVI.

La prohibición de reimprimir, publicar, introducir, vender, representar exhibir ó ejecutar en cualquiera de los dos Países obras que no hayan

sido publicadas por sus autores ó con autorización de los mismos, no impone á los dos Estados la obligación de vigilar oficiosamente por que tales impresiones, publicaciones, introducciones, ventas, ejecuciones, exhibiciones ó reprecentaciones, no se verifiquen, sino que es deber de los interesados ó de sus representantes denunciar á las Autoridades respectivas las reimpresiones, introducciones, ventas, etcétera, que estén por hacerse ó se hayan ejecutado, para que por la vía y formas legales se impida ó castigue la operación de que se trate. Con tal objeto deberán los interesados tener en los dos Países, respectivamente, sus mandatarios con poderes suficientes.

Artículo XVII.

La prohibición de vender las obras á que sealude en este Convenio no se refiere á las que á la fecha de su promulgación en ambos Países estuvieren ya expuestas á la venta pública en cualesquiera de ellos. Para determinar cuáles sean éstas, á solicitud del interesado se marcarán por la Autoridad que al efecto se designe.

Artículo XVIII.

Ambos Estados se aseguran mutualmente el trato de la Nación más favorecida; es decir, que si en cualquier Convenio, para proteger la propiedad intelectual, se concedieren mayores ventajas por uno de ellos á una tercera Potencia, el otro disfrutará también de iguales ventajas, bajo las mismas condiciones.

Artículo XIX.

El presente Convenio entrará en vigor dos meses después del canje de las ratificationes, y regirá durante un período de seis años, continuando sus efectos hasta que haya sido denunciado por una ú otra de las Altas Partes contratantes, y durante un año después de la denunciación.

Ambas Partes se reservan, sin embargo, la facultad de introducir en él, de común acuerdo, cualquiera modificación ó mejora que la experiencia demuestre ser conveniente y que sea compatible con su espíritu y principios.

Artículo XX.

Las ratificaciones del presente Convenio se canjearán en Quito ó en Madrid tan pronto como sea posible. En fe de lo cual los infrascritos Plenipotenciarios lo han firmado por duplicado y puesto en él sus propios sellos.

Hecho en Quito á 30 de Junio de 1900.

(L. S.) *A. Díaz Miranda.*
(L. S.) *J. Peralta.*

63.

ROUMANIE.

Ordonnance concernant les „Permis de résidence“; signée à Bucharest, août 1900.

Moniteur Officiel du 2/14 août 1900.

Art. 1. Every foreigner travelling or residing in Roumania is required to apply for a permit to reside in the country.

The permit of residence will be given, for a stated time only, on the production of a passport, or certificate of registration („extrait matriculaire“) from a Legation or Consulate, or of any other document which may be issued to the applicant in his country of origin for purposes of travelling, and which is authorized in the State to which he belongs.

2. Permits of residence will be issued to foreigners by the Prefectures of the districts in which they may take up their residence; at Bucharest, Jassy, Crajova, and Galatz, by the Prefecture of Police.

An exception is made to the above rule in the case of the communes bordering on the Danube and Black Sea, or of those on the frontier of the country which are not near the capital of the district. Foreigners who may establish themselves in these localities may obtain permits of residence on application to the Sub-Prefects.

3. Foreign travellers arriving in Roumania are first required to present themselves at their Legations or Consulates in order to obtain the visa of such Legations or Consulates to their passports or other documents issued for purposes of travelling by the competent authority of the States of which they are subjects.

The passport or other document so visé, or the extract from the register of the Legation or Consulate, should be presented, within twenty-four hours at most from the time of the foreigner's arrival in the country, to the Prefecture or to the authority mentioned in the previous Article, who, after examination of such documents, will issue to the foreigner the permit to reside in the country.

The official who issues the permit of residence is required to fasten the permit to the passport or extract or other document in such a manner that they may not become separated.

Foreign travellers who stay less than eight days in the country are exempted from this obligation. The permit for such stay of short duration shall be stated upon the passport or other document of the foreigner by the police officer at the frontier, whose duty it is to examine such documents, at the time of the foreigner's arrival in the country.

4. Foreigners are prohibited from travelling in the country, in towns, and in villages, and rural communes without permits of residence, and such action will be considered as not having the documents required for travelling, and shall be summoned before a Court of Justice for breach of law.

This Article does not apply to drivers and foreigners inhabiting the border lands of neighbouring countries who arrive daily, with permits for a stay of short duration, in the interests of their business, and who must always leave the country at the expiration of the term mentioned upon such permit.

5. Hotel proprietors and private persons who may receive foreign travellers are required to furnish to the police, or to the communal authority in any places where a special police organization does not exist, within twelve hours at the most from the arrival of the foreigner, a paper upon which shall be written the name, the Christian names, the profession, and the date of the passport of any foreigners who may lodge with them. For breach of this regulation they will be brought before a Court of Justice, and for a repetition of the offence the hotel will be closed for the time.

In villages and rural communes where there is no Chief of Police, the Mayors are required, without special authorization from the Minister of the Interior, to prohibit the residence of every person not possessing a permit of residence or a passport properly visé, who is not a Roumanian subject.

Similar steps will be taken in the case of any person who may be found with a permit of residence or a passport the duration of which has expired.

The Prefects and Sub-Prefects, in their inspection of villages and rural communes, will ascertain whether the requirements of this Article are carried into effect by the Mayors.

6· The permit of residence will be issued free of charge and without a special petition.

Passports will be issued by all competent authorities every day whether a holiday or not, from 8 A.M. to 8 P.M.

7. The Prefects of Police, and those of the districts, shall not be entitled to take measures for the expulsion of any foreigner, whether because ho does not possess a permit of residence or on any other ground.

Nevertheless they are required to bring such cases to the knowledge of the Minister of the Interior, in order that he may decide, after investigation, whether the case is one for the expulsion to be authorized by the Minister of the Interior, or to be authorized, in conformity with the law relative to foreigners, by the Council of Ministers.

8. Within thirty days from the publication of the present Regulations, all foreigners residing in the country, either in urban or rural communes, or who, as travellers, intend to stay more than eight days, must obtain permits of residence.

At the expiration of this period of thirty days, all foreigners who shall be found without a permit of residence shall be considered as being in the country without papers in proper form, and will come within the scope of the present Regulations.

Foreigners who have been long established in the country, and who may be engaged in important industrial, commercial, or agricultural pursuits, who direct financial or educational establishments, or who exercise a liberal profession, are, however, excepted, provided they are able to show that they have made an application to Parliament for naturalization.

9. The Roumanian authorities who issue the permits of residence are required to keep registers with counterfoils, and to record both on the permit and on the counterfoil, which remains in the register, the name and Christian names of the bearer of the permit, the number and date of his passport, and the name of the authorities of the place from which it was issued, the point of the frontier at which he may have entered the country, as well as the date of such entry, and the locality in which he intends to take up his residence or domicile.

C. Olanesco, Minister of the Interior.

64.

GRÈCE, SUISSE.

Déclaration concernant la situation des sociétés par actions et autres associations commerciales, industrielles et financières, signée à Athènes le $\frac{24 \text{ avril}}{7 \text{ mai}}$ 1901.

Recueil des Traités du XXe siècle.

Le Gouvernement royal de Grèce et le Conseil fédéral suisse ayant jugé utile de régler réciproquement la situation des sociétés par actions (anonymes) et autres associations commerciales, industrielles et financières, les Soussignés, en vertu de l'autorisation qui leur a été conférée, sont convenus de ce qui suit:

Les sociétés par actions (anonymes) et autres associations commerciales, industrielles ou financières, domiciliées dans l'un des deux pays et à condition qu'elles y aient été validement constituées conformément aux lois en vigueur, seront reconnues comme ayant l'existence légale dans l'autre pays, et elles y auront notamment le droit d'ester en justice devant les tribunaux, soit pour intenter une action, soit pour y défendre.

Il est entendu que la stipulation qui précède ne concerne point la question de savoir si une pareille société constituée dans l'un des deux pays

sera admise ou non dans l'autre pays pour y exercer son commerce ou son industrie, cette admission restant toujours soumise aux prescriptions qui existent à cet égard dans ce dernier pays.

Le présent Arrangement entrera en vigueur le 1/14 juin, et il ne cessera ses effets qu'un an après la dénonciation qui en sera faite de part ou d'autre.

Fait en double, à Athènes, le 24 avril / 7 mai 1901.

A. Romanos.
Alb. Hamburger.

65.

COLOMBIE, FRANCE.

Convention pour la protection de la propriété industrielle; signée à Bogota le 4 septembre 1901.*)

Journal Officiel, du 24 juillet 1904.

Le Président de la République française et le vice-président de la République de Colombie, chargé du pouvoir exécutif, désirant faciliter les relations commerciales entre la France et la Colombie, ont résolu de conclure une convention concernant la propriété industrielle, et, à cet effet, ont nommé pour lours plénipotentiaires, savoir:

Le Président de la République française: H. Hugues Boulard Pouqueville, envoyé extraordinaire et ministre plénipotentiaire, et le vice-président de la République de Colombie: M. le docteur Antonio-José Uribe, ministre des relations extérieures.

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:

Art. 1er. Les citoyens de chacune des Hautes Parties contractantes auront, sur le territoire de l'autre, les mêmes droits que les nationaux, en ce qui concerne les brevets d'invention, les marques de fabrique, étiquettes, enseignes, noms de commerce et de fabrique, ainsi que pour les noms des lieux et les indications de provenance.

Art. 2. Pour s'assurer la protection garantie par l'article précédent, les ressortissants de l'un et l'autre Etat ne sont pas astreints à établir leur domicile, leur résidence ou une représentation commerciale dans le pays où la protection sera réclamée, mais ils devront remplir les autres conditions et formalités prescrites par les lois et réglements de ce pays.

Art. 3. La présente convention s'applique, en France, aux marques qui, en Colombie, sont légitimement acquises par les industriels et négociants qui en usent et réciproquement.

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*) Les ratifications ont été échangées à Bogota, le 5 juillet 1904.

Il est, toutefois, entendu que chacun des deux Etats se réserve le droit de refuser le dépôt et d'interdire l'usage de toute marque qui serait, par sa nature, contraire à la morale et l'ordre public, ou aux bonnes mœurs.

Art. 4. Les noms commerciaux, les raisons de commerce et les enseignes seront protégés dans les deux Etats sans obligation de dépôt.

Art. 5. Le fait d'apposer ou de faire apposer sur un produit une fausse indication de provenance, dans laquelle un des Etats contractants, ou un lieu situé dans l'un d'entre eux serait directement ou indirectement indiqué comme pays ou comme lieu d'origine, sera puni conformément à la législation de chaque Etat. Si l'une des législations n'a pas prévu ce fait, celui-ci sera soumis à l'application de dispositions édictées contre la falsification de marque.

Art. 6. L'application des dispositions contenues aux articles 3 et 5 aura lieu à la requête, soit du ministère public, soit d'une partie intéressée, individu ou société, conformément à la législation de chaque Etat.

Sera réputé partie intéressée tout fabricant, commerçant ou producteur, engagé dans la fabrication, le commerce ou la production du produit, et établi dans la ville, la localité, la région ou le pays faussement indiqué comme lieu de provenance.

Les autorités ne seront pas tenues d'effectuer la saisie en cas de transit.

Art. 7. Les présentes dispositions ne font pas obstacle à ce que le vendeur indique son nom et son adresse sur les produits provenant d'un pays différent de celui de la vente, mais, dans ce cas, l'adresse ou le nom doit être accompagné de l'indication précise, et en caractères apparents, du pays ou du lieu de fabrication ou de production.

Art. 8. Les tribunaux de chaque pays auront à décider quelles sont les appellations qui, à raison de leur caractère générique, échappent aux dispositions de la présente convention, comme par exemple, celles de brandy, vermout, eau de Cologne. Les appellations régionales de provenance des produits vinicoles ne sont pas comprises dans la réserve édictée par cet article.

Art. 9. La présente convention sera ratifiée et les ratifications en seront échangées, aussitôt après l'accomplissement des formalités prescrites par les lois constitutionnelles des Etats contractants.

Elle sera exécutoire à partir du jour dudit échange, et elle demeurera obligatoire jusqu'à ce que l'une des deux parties contractantes ait annoncé à l'autre, mais six mois à l'avance, son intention d'en faire cesser les effets.

En foi de quoi, les plénipotentiaires respectifs ont signé et scellé la présente convention.

Fait à Bogotá, en double original, le 4 septembre 1901.

(L. S.) Signé: *Boulard-Pouqueville.*
(L. S.) Signé: *Antonio-José Uribe.*

66.

CHINE, FRANCE, GRANDE-BRETAGNE.

Règles concernant la compétence des Cours mixtes des quartiers internationaux et français à Shanghaï; du 10 juin 1902.

Parliamentary Papers. Presented to both Houses of Parliament by Command of His Majesty. March 1903.

Provisional Rules for defining the respective Jurisdiction of the Mixed Courts of the International and French Settlements.

In all civil cases between Chinese the plaintiff will follow the defendant, and will sue him before the Mixed Court of his (the defendant's) residence.

2. In all criminal cases of Chinese against Chinese, where foreigners are not concerned, and in all police cases against Chinese residents in the Settlements, the Mixed Court of the Settlement in which the crime or contravention has been committed is alone competent.

3. In mixed civil cases

a) If the plaintiff is a foreigner (not of French nationality) and the Chinese defendant is a resident of the International Settlement, he is to be sued before the Mixed Court of the International Settlement.

b) If the plaintiff is French and the Chinese defendant is a resident of the French Settlement, he is to be sued before the Mixed Court of the French Settlement.

c) If the plaintiff is a foreigner (not of French nationality) and the Chinese defendant is a resident of the French Settlement, the latter shall be sued before the Mixed Court of the International Settlement, whose warrant or summons for his appearance, after counter-signature by the French Consul-General, will be executed or served by the runners of the International Mixed Court, with the assistance of the police of the French Settlement, without previous hearing in the Mixed Court of the French Settlement.

d) If the plaintiff is French and the Chinese defendant is a resident of the International Settlement, the latter shall be sued before the Mixed Court of the French Settlement, whose warrant or summons for his appearance, after counter-signature by the Senior Consul, will be executed or served by the runners of the French Mixed Court, with the assistance of the police of the International Settlement, without a previous hearing in the Mixed Court of the International Settlement.

4. In criminal cases where a foreigner (not of French nationality) is complainant, the Mixed Court of the International Settlement is competent; if a Frenchman is complainant, the Mixed Court of the French Settlement is competent.

The provisions under clauses 3 (c) and 3 (d) as to executing warrants also apply under this clause.

Shanghae, June 10, 1902.

67.

ESPAGNE, PORTUGAL.

Echange de notes diplomatiques concernant le service militaire des Espagnols nés en Portugal et des Portugais nés en Espagne, du 26 janvier 1901.

Diario do Governo. 7 février 1901.

M. D. Luiz Polo de Bernabé, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté Catholique à M. le Conseiller João Marcellino Arroyo, Ministre et Secrétaire d'Etat des Affaires Etrangères.

Légation d'Espagne à Lisbonne.

Lisbonne, 26 janvier 1901.

Excellence,

Le Gouvernement de Sa Majesté Catholique et celui de Sa Majesté Très Fidèle ayant reconnu la nécessité d'éviter que les Espagnols nés en Espagne puissent se soustraire au service militaire dans les deux pays, et étant tombés déjà d'accord dans les différentes conférences que sur ce point particulier j'ai eu l'honneur d'avoir avec V. E. sur la forme dans laquelle l'arrangement devait être consigné, j'ai reçu de mon Gouvernement l'autorisation nécessaire pour rédiger la déclaration suivante:

Dès la publication dans la Gaceta de Madrid et dans le Diario do Governo de Lisbonne de la présente note et de la réponse de V. E. mentionnant le consentement du Gouvernement de Sa Majesté Très Fidèle, les Portugais nés sur le territoire espagnol qui seront appelés au service militaire en Espagne et en général tous les jeunes gens qui allèguent la qualité de sujets portugais nés en Espagne devront produire devant les autorités espagnoles compétentes l'année suivante, au moment des opérations du nouveau tirage au sort, un certificat attestant qu'ils ont satisfait à la loi sur le recrutement en Portugal.

Réciproquement les Espagnols nés en Portugal qui seront appelés au service militaire en Portugal et en général tous les jeunes gens qui allèguent la qualité de sujets espagnols nés en Portugal devront produire devant les autorités portugaises compétentes l'année suivante, lorsqu'on procédera de nouveau aux opérations du recrutement, un certificat attestant qu'ils ont tiré au sort en Espagne.

Dans le cas où les lois des deux pays ne fixeraient pas le même âge pour l'appel de leurs citoyens respectifs au service militaire, et où par conséquent le délai indiqué dans le paragraphe précédent deviendrait insuffisant, ce délai sera réputé prorogé pendant tout le temps nécessaire de façon que les sujets de la nation qui fixe un âge plus avancé aient pour la production du certificat en question un délai d'un an à compter du jour où ils sont appelés dans leur patrie au service militaire.

A défaut du dit document en bonne forme, l'individu appelé au service militaire dans la province où il est né devra faire partie du contingent militaire de cette province.

Le Gouvernement de Sa Majesté Catholique fera insérer la présente note et celle par laquelle V. E. lui fera savoir qu'elle est d'accord avec lui dans la Gaceta de Madrid aussi rapidement que le Gouvernement de Sa Majesté Très Fidèle fera connaître son intention de les publier dans le Diario do Governo, afin qu'elles soient promulguées simultanément dans les deux pays.

Je saisis avec empressement cette occasion de renouveler à V. E. l'assurance de ma haute considération.

L. Polo de Bernabé.

M. le Conseiller João Marcellino Arroyo à M. D. Luiz Polo de Bernabé.

Ministère des Affaires Etrangères.

Direction Générale des Affaires Politiques et Diplomatiques. — 1re Division.

Lisbonne, le 26 janvier 1901.

Très illustre et Excellentissime Monsieur.

J'ai l'honneur de vous accuser réception de la note que V. E., avec l'autorisation de son Gouvernement, a bien voulu m'adresser à cette date et j'informe V. E. que le Gouvernement de Sa Majesté est d'accord pour qu'à partir de la date de la publication simultanée de la présente note et de celle de V. E. à laquelle je réponds, dans le Diario do Governo de Lisbonne et dans la Gaceta de Madrid, il demeure entendu et convenu que les Portugais nés sur le territoire espagnol qui seront appelés au service militaire en Espagne, devront produire aux autorités espagnoles compétentes, l'année suivante lors des opérations du nouveau tirage au sort, un document justifiant qu'ils ont satisfait au service militaire en Portugal.

Réciproquement les Espagnols nés en Portugal qui seront appelés au service militaire en Portugal et, en général, tous les jeunes gens qui

allégueront la qualité de sujets espagnols nés en Portugal devront représenter aux autorités portugaises compétentes dans l'année suivante, lorsqu'on procédera de nouveau aux opérations du recrutement, un document établissant qu'ils ont tiré au sort en Espagne.

Dans le cas où les législations des deux pays fixeraient un âge différent pour l'appel des citoyens respectifs au service militaire et où par conséquent le délai fixé dans le paragraphe précédent serait insuffisant, ce délai sera considéré comme prorogé pendant tout le temps nécessaire de façon que les sujets de la nation qui a fixé un âge plus avancé aient, pour la production du document en question, un délai d'au moins un an à compter de l'appel au service militaire dans leur pays.

A défaut de ce document, en due forme, l'individu appelé par le sort au service militaire dans le lieu de sa naissance devra faire partie du contingent militaire de cette province.

Je saisis avec empressement cette occasion de renouveler à V. E. l'assurance de ma haute considération.

J. M. Arroyo.

68.

EGYPTE.

Décret fixant la compétence des tribunaux mixtes à l'égard des fonctionnaires diplomatiques ou consulaires, du 1er mars 1901.

Nous, Khédive d'Egypte,

Vu le Règlement d'organisation judiciaire pour les procès mixtes en Egypte;

Après accord intervenu entre Notre Gouvernement et les Puissances qui ont adhéré à la Réforme judiciaire;

Sur la proposition de Notre Ministre de la Justice et l'avis conforme de Notre Conseil des Ministres,

Décrétons:

Art. 1. Tous les fonctionnaires diplomatiques ou consulaires, envoyés de l'étranger en Egypte (missi), et leurs familles, auront la faculté d'actionner les tiers devant les Tribunaux mixtes égyptiens, sans cependant être justiciables de ces Tribunaux comme défendeurs, sauf dans le cas de demandes reconventionnelles jusqu'à due concurrence de la demande principale.

S'ils s'occupent de commerce ou d'industrie, s'ils possèdent ou exploitent des immeubles en Egypte, ils seront soumis à la juridiction des

Tribunaux mixtes égyptiens, pour toutes les affaires commerciales ou industrielles et pour toutes les actions réelles immobilières où leur qualité officielle ne sera pas en cause.

Tous les autres fonctionnaires non compris dans le premier paragraphe du présent article, ainsi que les cawas, seront assujettis à la juridiction mixte pour toutes les affaires ne concernant pas leurs fonctions officielles.

Art. 2. Ces dispositions entreront en vigueur un mois après la publication qui en sera faite dans les formes prévues par l'article 35, titre I, du Règlement d'organisation judiciaire.

Art. 3. Notre Ministre de la Justice est chargé de l'exécution du prèsent décret.

Fait au Palais de Koubbeh, le 1er mars 1901.

Abbas Hilmi.

Par le Khédive:

Le Président du Conseil des Ministres, *Moustapha Fehmy.*

Le Ministre des Affaires Etrangères, *Boutros Ghali.*

Le Ministre de la Justice, *Ibrahim Fouad.*

69.

ITALIE, MONACO.

Déclaration concernant la communication réciproque des actes intéressant l'état civil des ressortissants des deux pays; du 31 mars 1901.

Raccolta Ufficiale. No. 152. 1901.

Déclaration.

Le Gouvernement de Sa Majesté le Roi d'Italie et le Gouvernement de Son Altesse Sérénissime le Prince de Monaco, désirant assurer la communication réciproque des actes intéressant l'état civil de leurs ressortissants respectifs, sont convenus de ce qui suit:

Art. 1. Les deux Gouvernements contractants s'engagent à se remettre réciproquement, aux époques déterminées et sans frais, des expéditions, en extraits, dûment légalisées, des actes de naissance, des actes de reconnaissance d'enfants naturels, lorsque ces actes auront été reçus par un officier de l'état civil, des actes de mariage et des actes de décès dressés sur leur territoire et concernant des ressortissants de l'autre État.

Art. 2. La transmission des actes de décès s'étendra, en outre, aux personnes mortes dans la Principauté de Monaco et qui étaient nées, ou

qui avaient, d'après les renseignements fournis aux Autorités locales, leur domicile en Italie.

Il en sera de même pour les actes de décès des personnes mortes en Italie qui seraient nées ou qui avaient, d'après les renseignements fournis aux Autorités locales, leur domicile dans la Principauté de Monaco.

Art. 3. Les officiers de l'état civil dans la Principauté de Monaco et en Italie se donneront mutuellement avis, par la voie diplomatique, des reconnaissances et légitimations d'enfants naturels inscrites dans les actes de mariage.

Art. 4. Tous les trois mois, les expéditions des dits actes, dressés pendant le trimestre précédent, seront remises par le Gouvernement monégasque au Représentant de Sa Majesté le Roi d'Italie à Monaco; et par le Gouvernement Royal, à la Légation de Monaco à Rome.

Art. 5. Il est expressément entendu que la délivrance ou l'acceptation des expéditions des dits actes ne préjugera pas les questions de nationalité.

Les actes de l'état civil demandés de part et d'autre à la requête de particuliers non pourvus de certificat d'indigence, resteront soumis au payement des droits exigibles dans chacun des deux pays.

70.

BRÉSIL.

Décret relatif à la naturalisation du 12 novembre 1902.

Parliamentary Papers. Presented to both Houses of Parliament by Command of His Majesty. January 1903.

Decree No. 904 of the 12th November 1902. Regulates the Naturalization of Foreigners.

I, Francisco De Assis Rosa E. Silva, President of the Senate, make known to those to whom these presents shall come, that the National Congress decrees and promulgates the following Law:

Article 1. The following are deemed to be Brazilian citizens (Constitution Article 69, sections 1 to 6):

§ 1. Persons born in Brazil, although of a foreign father, providing the latter do not reside there in the service of his country.

§ 2. Children of a Brazilian father, and illegitimate children of a Brazilian mother, born abroad, if they establish their domicile in the Republic.

§ 3. Children of a Brazilian father who is abroad in the service of the Republic, although they may not establish their domicile in the Republic.

§ 4. Foreigners who, having been in Brazil on the 15th November 1889, dit not, up to the 24th August 1891, declare their intention of retaining their nationality of origin, in the manner prescribed in the Decrees Nos. 58a of the 14th December, 1889, and of the 15th May, 1890.

§ 5. Foreigners owning real property in Brazil, and married to Brazilian women, or having Brazilian children, provided they reside in Brazil, unless they declare their intention of not changing their nationality.

§ 6. Foreigners requesting naturalization in accordance with the present law.

Art. 2. Naturalized foreigners shall enjoy all civil and political rights, and shall be qualified to discharge any public office or appointment.

Sole paragraph. The following offices are excepted:

1. Those of President and Vice-President of the Republic.

2. Those of Senator or Deputy in the National Congress, without having been, for the first, a Brazilian citizen for more than six years, and, for the second, more than four years.

Art 3. Persons naturalized are not thereby relieved of the obligations contracted by them in their country of origin before their denationalization.

Art. 4. The President of the Republic has the exclusive right of granting certificates of naturalization to the foreigners who may demand them personally or through an agent with special powers.

Art. 5. The person to be naturalized, in his Petition addressed to the Federal Government, shall make the requisite declarations respecting his parentage, nationality, status, enumeration or specification of his children, if he have any of legitimate birth, and domicile; and he shall further produce papers to prove his.

1. Personal identity.

2. Majority according to law.

3. Residence in Brazil for at least two years.

4. Good behaviour as a man and a citizen, proved by an official document.

Art. 6. The condition of residence shall not be required in the case of

1. A foreigner married to a Brazilian woman.

2. An owner of real property in Brazil.

3. Any person connected with an industrial establishment, or the inventor or introducer of any useful industry.

4. Any person recommended by his learning or talents, or by his professional skill in any branch of industry.

5. The child of a naturalized foreigner, born abroad before the naturalization of his father.

Art. 7. For the purposes of the law, certificates extracted from the books of records and of public offices, as well as certificates given by any judicial, municipal, or police authority of the Union or a State, shall be sufficient proof.

Art. 8. The certificate of naturalization, signed by the President of the Republic and countersigned by the Minister of the Interior, shall be registered at the Ministry of the Interior, after that the person to be naturalized, personally or by his agent, has given a receipt for the said certificate, which shall be deemed to be of no effect unless asked for within the space of six months.

Art. 9. The papers of naturalization shall be prepared in the case of foreigners resident in the States:

1. Before the proper Secretariat of the State Government, which shall forward them to the Ministry of the Interior for the purposes of the granting and registering of the certificate, which shall be returned to the above-mentioned Government, in order to be handed to the person to be naturalized.

2. Before the President or Head of the Municipal Government, who shall forward them to the President or Governor of the State, for the purposes stated in the last paragraph.

Art. 10. At the proper Secretariat of the State Government a book shall also be kept for the registration of certificates of naturalization.

Art. 11. The period within which the certificate may be handed to the applicant in the States shall be one year, counting from its receipt at the Secretariat of the Government. After the expiration of that period, the document, if unclaimed, shall be returned to the Ministry of the Interior for the purposes stated at the end of Article 8.

Art. 12. Declaratory certificates of Brazilian citizenship may be issued independently of any formalities to persons who may demand it in person, giving proof of the conditions stated in Article 1, sections 2, 3, 4 and 5 of the present law.

1. It shall be the duty of the Minister of hae Interior to sign the said certificates, and the provisions of Articles 7 tnd 8 shall be followed as concerns the papers relating to the grant and its registration.

2. In the case of foreigners tacitly naturalized in virtue of Article 69, section 4 of the Constitution, the following documents, issued up to the date of this law, shall be equivalent to declaratory certificates of Brazilian citizenship:

1. Certificate as federal elector.

2. Decrees and orders of appointment to public offices, whether of the Union or of a State.

Art. 13. No foreigner shall be allowed to be naturalized who, either in Brazil or abroad, shall have been convicted or sentenced for homicide, theft, robbery with violence, bankruptcy, forgery, smuggling, embezzlement, false coining or procuring.

Art. 14. The papers relating to the naturalization of foreigners and to the proof of Brazilian citizenship are exempt from all charges, stamps and fees whatever.

Art. 15. The Regulations to be issued by the Government for the carrying out of this law shall contain, besides forms for the papers of

naturalization, provisions necessary to the preparation within a short time of a statistical statement of all the foreigners resident in Brazilian territory, and tacitly naturalized in virtue of the Constitution and previous laws.

Art. 16. All enactments to the contrary are repealed.

(Signed) Dr. *Francisco de Assis Rosa E Silva.*

Federal Senate, November 12, 1902.

71.

ITALIE.

Loi accordant les privilèges et immunités des représentants diplomatiques aux membres étrangers faisant partie des tribunaux arbitrals, institués conformément à la Convention pour le règlement pacifique des conflits internationaux signée à la Haye, le 29 juillet 1899,*) du 28 décembre 1902.

Gazzetta Ufficiale del Regno d'Italia. No. 149. 1903.

Vittorio Emanuele III per grazia di Dio e per volontà della Nazione Re d'Italia.

Il Senato e la Camera dei Deputati hanno approvato;

Noi abbiamo sanzionato e promulghiamo quanto segue:

Articolo unico.

Le immunità e le franchigie, che le leggi del Regno o gli usi diplomatici accordano ai rappresentanti delle Potenze accreditate in Italia, saranno estese ai membri stranieri di ciascun tribunale arbitrale, composto secondo il capo II, titolo IV della Convenzione conchiusa nell'Aja il 29 luglio 1899.

Victor Emanuel III von Gottes Gnaden und durch den Willen der Nation König von Italien.

Der Senat und die Kammer der Abgeordneten haben beschlossen;

Wir haben bestätigt und verkünden, was folgt:

Einziger Artikel.

Die Immunitäten und Befreiungen, die die Gesetze des Königreiches und diplomatisches Herkommen den Vertretern der in Italien beglaubigten Mächte einräumen, sollen auf die fremden Mitglieder eines jeden nach Kapitel II, Titel IV der am 29. Juli 1899 abgeschlossenen Haager Konvention gebildeten Schiedsgerichtes erstreckt werden.

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*) V. **N. R. G.** 2e s. XXVI. 920.

Ordiniamo che la presente, munita del sigillo dello Stato, sia inserta nella Raccolta ufficiale delle leggi e dei decreti del Regno d'Italia, mandando a chiunque spetti di osservarla e di farla osservare come legge dello Stato.

Data a Roma, addì 28 dicembre 1902.

Vittorio Emanuele.

Prinetti.
Cocco-Ortu.
Ottolenghi.
Carcano.
Galimberti.

Wir verordnen, dass Gegenwärtiges mit dem Staatssiegel versehen in die amtliche Sammlung der Gesetze und Verordnungen des Königreichs Italien eingereiht werde, indem Wir einen Jeden, den es betrifft, anbefehlen, dies als Staatsgesetz zu beachten und beachten zu lassen.

Gegeben zu Rom, den 28. Dezember 1902.

(Unterschriften.)

72.

ITALIE.

Loi accordant franchise de port et de transport pour les lettres, mandats de poste, effets, colis, etc. des prisonniers de guerre ainsi qu'au service des Bureaux de renseignements, institués conformément à l'article 14 de la Convention concernant les lois et coutumes de la guerre sur terre signée à la Haye, le 29 juillet 1899,*) du 28 décembre 1902.

Gazzetta Ufficiale del Regno d'Italia. No. 149. 1903.

Vittorio Emanuele III per grazia di Dio e per volontà della Nazione Re d'Italia.

Il Senato e la Camera dei Deputati hanno approvato:

Noi abbiamo sanzionato e promulghiamo quanto segue:

Articolo unico.

Gli Uffici d'informazioni, di cui è cenno all' articolo 14 del regolamento

Victor Emanuel III von Gottes Gnaden und durch den Willen der Nation König von Italien.

Der Senat und die Kammer haben beschlossen;

Wir haben bestätigt und verkünden, was folgt:

Einziger Artikel.

Die Auskunftsstellen, von denen im Art. 14 der Bestimmungen die

*) V. **N. R. G.** 2e s. XXVI. 949.

annesso alla Convenzione, concernente le leggi e gli usi della guerra terrestre, stipulata all'Aja tra le Potenze intervenute alla Conferenza internazionale della pace, addì 29 luglio 1899, godono della franchigia postale.

Le lettere, i vaglia, i gruppi di denaro, come pure i pacchi postali, destinati ai prigionieri di guerra, o spediti da essi, sono esenti da ogni tassa postale, sia in arrivo, sia in partenza, sia in transito.

I doni e i soccorsi in natura, destinati ai prigionieri di guerra, sono ammessi in franchigia da ogni diritto d'importazione od altro qualsiasi, comme pure dalle tasse di trasporto, sulle strade ferrate esercitate dallo Stato.

Ordiniamo che la presente, munita del sigillo dello Stato, sia inserta nella Raccolta ufficiale delle leggi e dei decreti del Regno d'Italia, mandando a chiunque spetti di osservarla e di farla osservare come legge dello Stato.

Data a Roma, addì 28 dicembre 1902.

Vittorio Emanuele.

Prinetti.
Cocco-Ortu.
Ottolenghi.
Carcano.
Galimberti.

Rede ist, die den Anhang des von den bei der internationalen Friedenskonferenz im Haag vertretenen Mächten am 29. Juli 1899 abgeschlossenen Übereinkommens über die Gesetze und Gebräuche des Landkriegs bilden, geniessen Postfreiheit.

Die für Kriegsgefangene bestimmten oder von ihnen abgeschickten Briefe, Postanweisungen, Geldsendungen, wie auch Postpakete sind befreit von jeder Postgebühr sowohl bei der Ankunft, wie bei der Aufgabe als beim Durchgang.

Für Kriegsgefangene bestimmte Geschenke und Naturalunterstützungen geniessen Freiheit von Eingangszöllen und ähnlichen Lasten wie auch von den Beförderungskosten auf den im Staatsbetrieb stehenden Eisenbahnstrecken.

Wir verordnen, dass Gegenwärtiges mit dem Staatssiegel versehen in die amtliche Sammlung der Gesetze und Verordnungen des Königreichs Italien eingereiht werden, indem Wir einen Jeden, den es betrifft, anbefehlen, dies als Staatsgesetz zu beachten und beachten zu lassen.

Gegeben zu Rom, den 28. Dezember 1902.

(Unterschriften.)

73.

SUISSE.

Loi concernant la nationalité; du 25 juin 1903.

Publication officielle de la Confédération Suisse.

Die Bundesversammlung der schweizerischen Eidgenossenschaft, in Ausführung des Art. 44 der Bundesverfassung; nach Einsicht einer Botschaft des Bundesrates vom 20. März 1901, beschliesst:

I. Von der Erwerbung des Schweizerbürgerrechtes.

Art. 1. Wenn ein Ausländer das Schweizerbürgerrecht zu erlangen wünscht, so hat er beim Bundesrat die Bewilligung zur Erwerbung eines Gemeinde- und Kantonsbürgerrechts nachzusuchen.

Im Falle, dass einem Ausländer das Bürgerrecht schenkungsweise erteilt werden will, ist die Bewilligung dazu durch die betreffende Kantonsregierung bei dem Bundesrate ebenfalls nachzusuchen.

Art. 2. Die Bewilligung wird nur an solche Bewerber erteilt, welche sich über einen der Einreichung ihres Gesuches unmittelbar vorangehenden zweijährigen ordentlichen Wohnsitz in der Schweiz ausweisen.

Der Bundesrat prüft auch die Beziehungen des Bewerbers zu dem bisherigen Heimatstaate, sowie dessen sonstige persönliche und Familienverhältnisse. Er kann die Bewilligung verweigern, wenn diese Beziehungen oder diese Verhältnisse so beschaffen sind, dass aus der Einbürgerung des Gesuchstellers der Eidgenossenschaft Nachteile erwachsen würden.

Art. 3. Die Aufnahme in das Bürgerrecht erstreckt sich auf die Ehefrau und die Kinder des Gesuchstellers, wenn sie nach dem Rechte der Heimat unter seiner ehemännlichen oder elterlichen Gewalt stehen und in der Bewilligung des Bundesrates nicht ausdrücklich Ausnahmen gemacht werden.

Art. 4. Jede Erteilung des Gemeinde- und Kantonsbürgerrechts an Ausländer, ohne die vorherige Bewilligung des Bundesrates, ist ungültig.

Hinwieder ist das Schweizerbürgerrecht erst dann erworben, wenn zu jener Bewilligung des Bundesrates die Erwerbung eines Gemeinde- und Kantonsbürgerrechts gemäss den Bestimmungen der betreffenden Kantonalgesetzgebung hinzugekommen ist.

Die bundesrätliche Bewilligung erlischt, wenn deren Inhaber nicht binnen drei Jahren, vom Datum der Ausstellung an, ein Gemeinde- und Kantonsbürgerrecht erworben hat.

Art. 5. Die Kantone sind berechtigt, auf dem Wege der Gesetzgebung zu bestimmen, dass die im Kanton geborenen Kinder von im Kanton wohnenden Ausländern von Gesetzes wegen und ohne dass eine Bewilligung des Bundesrates erforderlich wäre, Kantons- und damit Schweizerbürger sind:

a) wenn die Mutter schweizerischer Herkunft ist, oder
b) wenn die Eltern zur Zeit der Geburt des Kindes wenigstens fünf Jahre ununterbrochen im Kanton gewohnt haben.

Die Kantone sollen das Recht der Option vorbehalten.

Art. 6. Personen, welche neben dem schweizerischen Bürgerrecht dasjenige eines fremden Staates besitzen, haben diesem Staate gegenüber, so lange sie darin wohnen, keinen Anspruch auf die Rechte und den Schutz eines Schweizerbürgers.

II. Vom Verzichte auf das Schweizerbürgerrecht.

Art. 7. Ein Schweizerbürger kann auf sein Bürgerrecht verzichten, insofern er

a) in der Schweiz keinen Wohnsitz mehr hat;
b) nach den Gesetzen des Landes, in welchem er wohnt, handlungsfähig ist;
c) das Bürgerrecht eines anderen Staates — für sich, seine Ehefrau und seine Kinder — im Sinne des letzten Absatzes von Art. 9 bereits erworben hat oder dasselbe ihm zugesichert ist.

Art. 8. Die Verzichtserklärung ist im Begleit der erforderlichen Ausweise schriftlich der Kantonsregierung einzureichen und von dieser der Behörde der Heimatgemeinde für sich und zu Handen etwa weiterer Beteiligter mit Festsetzung einer Einspruchsfrist von längstens vier Wochen zur Kenntnis zu bringen.

Streitigkeiten über die Zulässigkeit eines Verzichts auf das Schweizerbürgerrecht werden vom Bundesgerichte nach dem im Bundesgesetze über die Organisation der Bundesrechtspflege vom 22. März 1893 für staatsrechtliche Entscheidungen vorgeschriebenen Verfahren beurteilt.

Art. 9. Sind die im Art. 7 genannten Bedingungen erfüllt und liegt eine Einsprache nicht vor oder ist dieselbe abgewiesen, so spricht die Behörde, welche hierzu nach den kantonalen Gesetzen befugt ist, die Entlassung aus dem Kantons- und Gemeindebürgerrecht aus.

Die Entlassung, welche auch den Verlust des Schweizerbürgerrechtes in sich schliesst, erfolgt mit der Zustellung der Entlassungsurkunde an den Verzichtenden.

Sie erstreckt sich auf die Ehefrau und die Kinder, insofern dieselben unter der ehemännlichen oder elterlichen Gewalt des Entlassenen stehen und nicht ausdrückliche Ausnahmen gemacht werden.

III. Wiederaufnahme in das Schweizerbürgerrecht.

Art. 10. Der Bundesrat kann, nach Anhörung des Heimatkantons, die unentgeltliche Wiederaufnahme folgender Personen in ihr früheres Gemeinde- und Kantonsbürgerrecht verfügen, wenn dieselben in der Schweiz Wohnsitz haben:

a) der Wittwe und der zu Tisch und Bett getrennten oder geschiedenen Ehefrau eines Schweizerbürgers, welcher auf sein Bürgerrecht verzichtet hat, sowie derjenigen Kinder desselben,

welche zur Zeit der Entlassung unter elterlicher Gewalt waren, vorausgesetzt, dass die Wittwe und die getrennte oder geschiedene Ehefrau binnen zehn Jahren nach Auflösung oder Trennung der Ehe, die Kinder binnen der gleichen Frist nach zurückgelegtem zwanzigstem Altersjahr, darum einkommen;

b) der Wittwe und der zu Tisch und Bett getrennten oder geschiedenen Ehefrau, welche durch ihre Heirat das Schweizerbürgerrecht verloren hat, sofern sie binnen zehn Jahren nach Auflösung oder Trennung der Ehe ihre Wiedereinbürgerung verlangt;

c) solcher Personen, welche durch besondere Verhältnisse genötigt wurden, auf das Schweizerbürgerrecht zu verzichten, sofern sie binnen zehn Jahren nach ihrer Rückkehr in die Schweiz ein solches Gesuch stellen.

Mit der Mutter oder den Eltern werden in den Fällen a, b und c auch die nach dem Rechte des Staates, dem sie angehören, noch minderjährigen oder bevormundeten Kinder aufgenommen, wenn die Mutter die elterliche Gewalt über ihre Kinder besitzt oder der ihnen bestellte Vormund sich damit einverstanden erklärt und nicht ausdrückliche Ausnahmen gemacht werden.

IV. Kanzleigebühren.

Art. 11. Für die Ausfertigung der Bewilligung zur Erwerbung eines Gemeinde- und Kantonsbürgerrechtes erhebt die Bundeskanzlei eine Gebühr von Fr. 20.

Diese Gebühr ist zu erlassen:

a) bei Wiederaufnahme in das schweizerische Bürgerrecht:

b) wenn der Bewerber in der Schweiz geboren ist und wenigstens zehn Jahre in der Schweiz gewohnt hat;

c) wenn eine Kantonsregierung die Bewilligung für einen Ausländer nachsucht, dem das Bürgerrecht schenkungsweise erteilt werden soll (Art. 1, Absatz 2).

V. Nichtigerklärung.

Art. 12. Der Bundesrat kann die einem Ausländer erteilte Bewilligung zur Erwerbung eines Gemeinde- und Kantonsbürgerrechts während fünf Jahren seit der Kantonsbürgerrechtserwerbung für nichtig erklären, wenn es sich herausstellt, dass die im Gesetz für die Erteilung dieser Bewilligung aufgestellten Bedingungen nicht erfüllt waren.

Die Nichtigerklärung der Bewilligung hat die Aufhebung des auf Grund derselben verliehenen Gemeinde- und Kantonsbürgerrechts zur Folge.

Der Bundesrat kann die nach Art. 5 erteilte Einbürgerung jederzeit nichtig erklären, wenn sie auf betrügerische Weise erlangt worden ist.

Das gleiche Recht bleibt den Kantonen vorbehalten.

VI. Schlussbestimmungen.

Art. 13. Den in Art. 10, b, genannten Personen wird eine Frist von zwei Jahren gewährt, um ihr Gesuch für Wiedereinbürgerung einzureichen,

wenn die im erwähnten Artikel vorgesehene zehnjährige Frist im Zeitpunkte des Inkrafttretens dieses Gesetzes bereits verflossen war.

Art. 14. Die in Gemässheit des Art. 5 erlassenen kantonalen Gesetzesbestimmungen bedürfen, bevor sie in Kraft treten, der Genehmigung des Bundesrates.

Art. 15. Das Bundesgesetz vom 3. Juli 1876, betreffend die Erteilung des Schweizerbürgerrechtes und den Verzicht auf dasselbe, sowie alle mit dem vorliegenden Gesetze im Widerspruch stehenden Bestimmungen der Gesetzgebung des Bundes und der Kantone sind aufgehoben.

Art. 16. Der Bundesrat wird beauftragt, auf Grundlage der Bestimmungen des Bundesgesetzes vom 17. Juni 1874, betreffend Volksabstimmung über Bundesgesetze und Bundesbeschlüsse, die Bekanntmachung dieses Gesetzes zu veranstalten und den Beginn der Wirksamkeit desselben festzusetzen.

Also beschlossen vom Nationalrate,

Bern, den 25. Juni 1903.

Der Präsident: *Cd. Zschokke.*
Der Protokollführer: *Ringier.*

Also beschlossen vom Ständerate,

Bern, den 25. Juni 1903.

Der Präsident: *Hoffmann.*
Der Protokollführer: *Schatzmann.*

Der schweizerische Bundesrat beschliesst:

Das vorstehende, unterm 1. Juli 1903 öffentlich bekannt gemachte Bundesgesetz ist in die eidgenössische Gesetzsammlung aufzunehmen und tritt mit dem 1. Januar 1904 in Kraft.

Bern, den 2. Oktober 1903.

Im Namen des schweiz. Bundesrates,

Der Bundespräsident: *Deucher.*

Der I. Vizekanzler. *Schatzmann.*

74.

DANEMARK.

Adhésion du Danemark à la Convention internationale du 9 septembre 1886, créant une Union pour la protection des œuvres littéraires et artistiques, ainsi qu'à l'Article Additionnel et à la Déclaration interprétative du 4 mai 1896; signée à Londres, le $\frac{29 \text{ juin}}{3 \text{ juillet}}$ 1903.

Treaty Series.No. 11. 1903.

M. Carlin to the Marquess of Lansdowne.
(Received June 30.)

M. le Marquis, Londres, le 29 juin, 1903.

Sur l'ordre de mon Gouvernement, j'ai l'honneur d'informer votre Seigneurie que, par note du 13 courant, son Excellence M. Deuntzer, Président du Conseil, Ministre des Affaires Étrangères du Royaume de Danemark, a fait connaître au Conseil Fédéral l'adhésion de ce Royaume à la Convention du 9 septembre, 1886, créant une Union pour la protection des œuvres littéraires et artistiques, ainsi qu'à l'Article Additionnel et à la Déclaration interprétative signés à Paris le 4 mai, 1896.

Cette adhésion produira ses effets à partir du 1er juillet prochain, et comprendra le Royaume de Danemark et les Iles Féroë, avec exclusion de l'Islande, du Groenland, et des Antilles Danoises.

En ce qui concerne la contribution aux dépenses du Bureau International de Berne, le Danemark sera rangé dans la quatrième classe.

Je vous serais fort obligé de vouloir bien consentir à me donner acte de la présente communication, et saisis, &c.

(Signé) *Carlin.*

The Marquess of Lansdowne to M. Carlin.

Sir, Foreign Office, July 3, 1903.

I have the honour to acknowledge the receipt of your note of the 29th ultimo, notifying the accession of Denmark to the Convention of the 9th September, 1886, for the protection of literary and artistic works, and also to the Additional Article and Declaration of the 4th May, 1896.

His Majesty's Government note that the accession will take effect from the 1st instant, and will include the Kingdom of Denmark and the Faröe Islands, but will exclude Iceland, Greenland, and the Danish Antilles; and also that, as regards its contribution to the expenses of the Berne Bureau, Denmark will be placed in the fourth class.

I have, &c.
(Signed) *Lansdowne.*

75.

MEXIQUE.

Accession à la Convention d'Union pour la Protection de la Propriété Industrielle du 20 mars 1883, complétée et modifiée par l'Acte Additionnel du 14 décembre 1900; faite à Londres, le 13 août 1903.

Treaty Series. No. 13. 1903.

M. Carlin to the Marquess of Lansdowne.
(Received August 15.)

Londres, le 13 Août, 1903.

M. le Marquis,

Sur l'ordre de mon Gouvernement, j'ai l'honneur de porter à la connaissance de Votre Seigneurie que les Etats-Unis du Mexique ont accédé à la Convention d'Union pour la Protection de la Propriété Industrielle du 20 Mars, 1883, complétée et modifiée par l'Acte Additionnel du 14 Décembre, 1900.

Au point de vue de la répartition des frais du Bureau International, le Mexique a demandé à figurer dans la troisième des classes prévues sous le numéro 6 du Protocole de Clôture de la susdite Convention.

D'après ce qui a été disposé à l'Article XVI de la Convention revisée, et à défaut de la fixation, par le Gouvernement Mexicain, d'une date déterminée pour son entrée dans l'Union, l'accession précitée produira ses effets un mois après la date de la note du Conseil Fédéral, soit à partir du 7 Septembre, 1903.

Je serais vivement obligé à Votre Seigneurie de bien vouloir consentir à me donner acte de la présente communication, et je saisis, &c.

(Signé) *Carlin.*

The Marquess of Lansdowne to M. Carlin.

Sir, Foreign Office, August 25, 1903.

I have the honour to acknowledge the receipt of your note of the 13th instant, announcing the accession of the United States of Mexico to the Convention of the 20th March, 1883, creating a Union for the Protection of Industrial Property, as completed and modified by the Additional Act of the 14th December, 1900.

I note that Mexico will rank in the third class with respect to its contribution to the expenses of the International Bureau; and that, since no date of accession has been fixed by the Mexican Government, the entry of Mexico within the Union will, in accordance with Article XVI of the

revised Convention, take effect one month after the date of the note of the Federal Council communicating this intelligence, viz., on the 7th September, 1903.

I have, &c.
(Signed) *Lansdowne.*

76.

GRANDE-BRETAGNE, CHINE.

Introduction de la Main-d'œuvre asiatique dans l'Afrique du Sud; signée à Londres, le 13 mai 1904 et correspondance y relative du 2 novembre 1903 au 15 février 1904.

Treaty Series. No. 7. 1904 et Parliamentary Papers, février 1904.

Whereas a Convention between Her Majesty Queen Victoria and His Majesty the Emperor of China was signed at Peking on the 24th October, 1860, by Article V of which His Imperial Majesty the Emperor of China consented to allow Chinese subjects, wishing to take service in British Colonies or other parts beyond the seas, to enter into engagements with British subjects, and to ship themselves and their families on board of British vessels at the open ports of China in conformity with Regulations to be drawn up between the two Governments for the protection of such emigrants:

And whereas the aforesaid Regulations have not hitherto been framed, His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty the Emperor of China have accordingly appointed the following as their respective Plenipotentiaries, that is to say:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, the Most Honourable Henry Charles Keith Petty-Fitzmaurice, Marquess of Lansdowne, His Majesty's Principal Secretary of State for Foreign Affairs; and

His Majesty the Emperor of China, Chang Têh-Yih, Brevet Lieutenant-General of the Chinese Imperial Forces, His Imperial Majesty's Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India;

And the said Plenipotentiaries having met and communicated to each other their respective full powers, and found them in good and due form, have agreed upon and concluded the following Articles:

Article I.

As the Regulations to be framed under the above-mentioned Treaty were intended to be of a general character, it is hereby agreed that on each occasion when indentured emigrants are required for a particular British Colony or Protectorate beyond the seas, His Britannic Majesty's Minister in Peking shall notify the Chinese Government, stating the name of the particular Colony or Protectorate for which the emigrants are required, the name of the Treaty port at which it is intended to embark them, and the terms and conditions on which they are to be engaged; the Chinese Government shall thereupon, without requiring further formalities, immediately instruct the local authorities at the specified Treaty port to take all the steps necessary to facilitate emigration. The notification herein referred to shall only be required once in the case of each Colony or Protectorate, except when emigration under indenture to that Colony or Protectorate from the specified Treaty port has not taken place during the preceding three years.

Article II.

On receipt of the instructions above referred to, the Taotai at the port shall at once appoint an officer, to be called the Chinese Inspector, who, together with the British Consular Officer at the port, or his Delegate, shall make known by Proclamation and by means of the native press the text of the Indenture which the emigrant will have to sign, and any particulars of which the Chinese officer considers it essential that the emigrant shall be informed, respecting the country to which the emigrant is to proceed, and respecting its laws.

Article III.

The British Consular Officer at the port, or his Delegate, shall confer with the Chinese Inspector as to the location and installation of the offices and other necessary buildings, hereinafter called the Emigration Agency, which shall be erected or fitted up by the British Government, and at their expense, or the purpose of carrying on the business of the engagement and shipment of the emigrants, and in which the Chinese Inspector and his staff shall have suitable accommodation for carrying on their duties.

Article IV.

1. There shall be posted up in conspicuous places throughout the Emigration Agency, and more especially in that part of it called the Depôt, destined for the reception of intending emigrants, copies of the Indenture to be entered into with the emigrant, drawn up in the Chinese and English languages, together with copies of the special Ordinance, if any, relating to immigration into the particular Colony or Protectorate for which the emigrants are required.

2. There shall be kept a Register in English and in Chinese, in which the names of intending indentured emigrants shall be inscribed, and in this Register there shall not be inscribed the name of any person who is under 20 years of age, unless he shall have produced proof of his

having obtained the consent of his parents or other lawful guardians to emigrate, or, in default of these, of the Magistrate of the district to which he belongs. After signature of the indenture according to the Chinese manner, the emigrant shall not be permitted to leave the Depôt, previously to his embarkation, without a pass signed by the Chinese Inspector, and countersigned by the British Consular Officer or his Delegate, unless he shall have, through the Chinese Inspector, renounced his agreement and withdrawn his name from the register of emigrants.

3. Before the sailing of the ship each emigrant shall be carefully examined by a qualified Medical Officer nominated by the British Consular Officer or his Delegate. The emigrants shall be paraded before the British Consular Officer or his Delegate and the Chinese Inspector or his Delegate, and questioned with a view to ascertain their perfect understanding of the Indenture.

Article V.

All ships employed in the conveyance of indentured emigrants from China under this Convention shall engage and embark them only at a Treaty port, and shall comply with the Regulations contained in the Schedule hereto annexed and forming part of the Convention.

Article VI.

For the better protection of the emigrant, and of any other Chinese subject who may happen to be residing in the Colony or Protectorate to which the emigration is to take place, it shall be competent to the Emperor of China to appoint a Consul or Vice-Consul to watch over their interests and well-being, and such Consul or Vice-Consul shall have all the rights and privileges accorded to the Consuls of other nations.

Article VII.

Every Indenture entered into under the present Articles shall clearly specify the name of the country for which the labourer is required, the duration of the engagement, and, if renewable, on what therms, the number of hours of labour per working day, the nature of the work, the rate of wages and mode of payment, the rations, clothing, the grant of a free passage out, and, where such is provided for therein, a free passage back to the port of embarkation in China for himself and family, right to free medical attendance and medicines, whether in the Colony or Protectorate or on the voyage from and to the port of embarkation in China, and any other-advantages to which the emigrant shall be entitled. The Indenture may also provide that the emigrant shall, if considered necessary by the medical authorities, be vaccinated on his arrival at the Depôt, and, in the event of such vaccination being unsuccessful, revaccinated on board ship.

Article VIII.

The Indenture shall be signed, or in cases of illiteracy marked, by the emigrant after the Chinese manner, in the presence of the Chinese

Inspector or his Delegate and of the British Consular Officer or his Delegate, who shall be responsible to their respective Governments for its provisions having been clearly and fully explained to the emigrant previous to signature. To each emigrant there shall be presented a copy of the Indenture drawn up in Chinese and English. Such Indenture shall not be considered as definitive or irrevocable until after the embarkation of the emigrant.

Article IX.

In every British Colony or Protectorate to which indentured Chinese emigrants proceed, an officer or officers shall be appointed, whose duty it shall be to insure that the emigrant shall have free access to the Courts of Justice to obtain the redress for injuries to his person and property which is secured to all persons, irrespective of race, by the local law.

Article X.

During the sojourn of the emigrant in the Colony or Protectorate in which he is employed, all possible postal facilities shall be afforded to him for communicating with his native country, and for making remittances to his family.

Article XI.

With regard to the repatriation of the emigrant and his family, whether on the expiration of the Indenture or from any legal cause, or in the event of his having been invalided from sickness or disablement, it is understood that this shall always be to the port of shipment in China, and that in no case shall it take place by any other means than actual conveyance by ship, and payment of money to the returning emigrant in lieu of passage shall not be admissible.

Article XII.

Nothing in any Indenture framed under these Articles shall constitute on the part of the employer a right to transfer the emigrant to another employer of labour without the emigrant's free consent and the approval of his Consul or Vice-Consul; and should any such transfer or assignment take place, it shall not in any way invalidate any of the rights or privileges of the emigrant under the Indenture.

Article XIII.

It is agreed that a fee on each indentured emigrant shipped under the terms of this Convention shall be paid to the Chinese Government for expenses of inspection, but no payment of any kind shall be made to the Chinese Inspector or any other official of the Chinese Government at the port of embarkation. The above fee shall be paid into the Customs bank previous to the clearance of the ship, and shall be calculated at the following rate: 3 Mexican dollars per head for any number of emigrants not exceeding 10,000, and two dollars per head for any number in excess

thereof, provided they are shipped at the same Treaty port, and that not more than twelve months have elapsed since the date of the last shipment.

Should the port of embarkation have been changed, or a space of more than twelve months have elapsed since the date of the last shipment, inspection charges shall be paid as in the first instance.

Article XIV.

The English and Chinese text of the present Convention have been carefully compared, but in the event of there being any difference of meaning between them, the sense as expressed in the English text shall be held to be the correct sense.

Article XV.

The present Convention shall come into force on the date of its signature and remain in force for four years from that date, and after such period of four years it shall be terminable by either of the High Contracting Parties on giving one year's notice.

In witness whereof the Plenipotentiaries have signed the present Convention, and have affixed thereto their seals.

Done at London in four copies, two in English and two in Chinese, this thirteenth day of May of the year 1904.

(L. S.)	(Signed)	*Lansdowne.*
(L. S.)	(Signed)	*T. Y. Chang.*

Schedule.

Regulations.

Ships employed in the transport of indentured emigrants from China under this Convention must be seaworthy, clean, and properly ventilated, and, with regard to the following matters, shall comply with conditions as far as possible equivalent to those in force in British India with reference to the emigration of natives from India:

Accommodation required on board (vide section 57 of „The Indian Emigration Act, 1883").

Sleeping accommodation, consisting of wooden sheathing to the decks or sleeping platforms (vide rule regarding „iron decks", as amended the 16th August 1902, in Schedule „A" to the rules under „The Indian Emigration Act, 1883").

Rules as to space on board (vide section 58 of „The Indian Emigration Arct, 1883").

Carriage of qualified surgeon, with necessary medical stores.

Storage of drinking water (vide rule 113, as amended the 24th February 1903, under „The Indian Emigration Act, 1883").

Provision of adequate distilling apparatus (vide Schedule „C" to the rules under „The Indian Emigration Act, 1883").

The dietary for each indentured emigrant on board ship shall be as follows per day:

	Not less than
Rice, not less than $1^1/_3$ lb., or flour or bread stuffs .	$1^1/_2$ lb.
Fish (dried or salt) or meat (fresh or preserved) . .	$0^1/_2$ „
Fresh vegetables of suitable kinds	$1^1/_3$ „
Salt	1 oz.
Sugar	$1^1/_2$ „
Chinese tea	$0^1/_3$ „
Chinese condiments in sufficient qualities.	
Water, for drinking and cooking	1 gallon.

or such other articles of food as may be substituted for any of the articles enumerated in the foregoing scale as being in the opinion of the doctor on board equivalent thereto.

Exchange of Notes between the Marquess of Lansdowne and Chang Ta-jên, May 13, 1904.

Sir, Foreign Office, May 13, 1904.

By Article VI of the Convention about to be concluded between Great Britain and China with regard to Chinese subjects leaving the Treaty ports of China under Indenture for service in British Colonies or Protectorates it is provided that:

„For the better protection of the emigrant and of any other Chinese subject who may happen to be residing in the Colony or Protectorate to which the emigration is to take place, it shall be competent to the Emperor of China to appoint a Consul or Vice-Consul to watch over their interests and well-being, and such Consul or Vice-Consul shall have all the rights and privileges accorded to the Consuls of other nations.“

His Majesty's Government consider it specially important that the persons appointed to occupy, for the purpose named, the position of Consul or Vice-Consul should be experienced officers of Chinese nationality, that they should be exclusively in the service of the Emperor of China, and that in each case the name of the person selected should be communicated to His Majesty's Government, and their agreement to the appointment obtained.

I have the honour to inquire whether the Chinese Government are prepared to meet the wishes of His Majesty's Government in the matter. If so, and if you will inform me accordingly, this note and your reply might be attached to the Convention in order tho place on formal record the arrangement concluded.

I have, &c.
(Signed) *Lansdowne.*

Chang Ta-Jên,
&c., &c., &c.

My Lord Marquess, Chinese Legation, May 13, 1904.

In reply to your Lordship's note of this date, I have the honour to state that the Chinese Government are in entire accord with His Britannic Majesty's Government as to the great importance they attach to the Consuls and Vice-Consuls to be appointed under Article VI of the Convention about to be concluded between the two Governments being men of great experience, and will consider it a duty which they owe to the emigrant to confine the selection of these officers to such as in all respects conform to the requirements specified in the note above referred to, which, together with the present one, it has been mutually agreed shall, in proof of this understanding, be appended to the said Convention,

I have, &c.
(Signed) *T. Y. Chang.*

The Marquess of Lansdowne, K.G.,
&c., &c., &c.

77.

ESPAGNE, GUATÉMALA.

Convention concernant la reconnaissance mutuelle de la validité des titres académiques et des certificats d'études requises pour l'exercice des professions libérales dans l'autre Etat; signée à Guatémala, le 21 septembre 1903.*)

Gaceta de Madrid. No. 294. Octobre 1904.

Los Gobiernos de España y Guatemala, en el deseo de estrechar y fortalecer los vínculos de amistad que felizmente existen entre ambos países, han dispuesto celebrar un Convenio sobre reconocimiento mutuo de validez de títulos académicos y de incorporación de estudios, y al efecto han nombrado sus Plenipotenciarios, como sigue:

El Gobierno de Su Majestad Católica, al Excmo. Sr. D. Pedro de Carrere y Lembeye, Enviado Extraordinario y Ministro Plenipotenciario de España en Centro-América.

Y el Gobierno de Guatemala, al Sr. Licenciado D. Juan Barrios M., Secretario de Estado y del Despacho de Relaciones Exteriores de la República.

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*) Les ratifications ont été échangées à Guatémala, le 8 septembre 1904.

Quienes, debidamente autorizados para ello, han convenido en los artículos siguientes:

Artículo I

Los nacionales de ambos países que en cualquiera de los Estados signatarios de este Convenio hubieren obtenido título ó diploma expedido por la Autoridad nacional competente para ejercer profesiones liberales, se tendrán por habilitados por ejercerlas en uno y en otro territorio.

Artículo II

Para que el título ó diploma á que se refiere el articulo anterior produzca los efectos expresados, se requiere:

1.° La exhibición del mismo debidamente legalizado.

2.° Que el que lo exhiba acredite, mediante certificado expedido por la Legación ó el Consulado más cercano de su país, ser la persona á cuyo favor se ha extendido.

3.° Que cuando se solicite por el interesado en uno de los dos países el reconocimiento de la validez de un diploma ó titulo académico, expedido en el otro país para ejercer profesión determinada, se acredite que dicho diploma ó título habilita también para ejercer esa profesión en el país en que se haya expedido.

Artículo III

Los nacionales de cada uno de los dos países, que fueren autorizados para ejercer una profesión en el otro en virtud de las estipulaciones del presente Convenio, quedarán sujetos á todos los reglamentos, leyes, impuestos y deberes que rijan en la materia para los proprios nacionales.

Artículo IV

Sin perjuicio de que ambos Gobiernos se comuniquen recíprocamente los programas de enseñanza ó se entiendan respecto á cualesquiera detalles administrativos que puedan parecer necesarios, los estudios de asignaturas, realizados en uno de los Estados contratantes, podrán ser incorporados en los establecimientos docentes del otro, previo el cumplimiento de los requisitos siguientes:

1.° Exhibición por el interesado de certificación debidamente legalizada, en que conste haber sido aprobadas dichas asignaturas en establecimiento cuyos exámenes ó certificados de aptitud tengan validez oficial en el Estado donde se hayan realizado los estudios.

2.° Exhibición de certificado expedido por la Legación ó Consulado más próximo del país á que el interesado pertenezca, y en el cual se acredite que este último es la persona á cuyo favor se ha extendido la certificación susodicha.

3.° Informes del Consejo de Instrucción pública en España ó del Centro consultivo ó docente señalado para este efecto por Guatemala,

haciendo constar los estudios exigidos por las disposiciones nacionales que puedan estimarse equivalentes á los realizados en el extranjero por el que solicite.

Artículo V

Se entiende, sin embargo, que el diploma ó título expedido por las Autoridades de uno de los dos países contratantes á favor de uno de sus ciudadanos ó de un ciudadano extranjero, no habilita a este ciudadano para que ejerza en el otro país cargo ó profesión reservado á los propios súbditos ó ciudadanos por la Constitución ó por la leyes.

Artículo VI

Los beneficios derivados del presente Convenio á los nacionales de ambos países contratantes serán únicamente aplicables á los países de lengua española que, en su legislación interior ó mediante Convenio, concedan las mismas ventajas á los diplomas ó títulos académicos ó profesionales expedidos respectivamente por cada uno de ellos.

Artículo VII

La duración del presente Convenio será de diez años, á contar desde la fecha del canje de ratificaciones del mismo, y si para entonces no hubiere sido denunciado por ninguna de las partes contratantes, subsistirá por otros diez años, y así sucesivamente.

En fe de lo cual, los Plenipotenciarios suscriben el presente Convenio por duplicado, en la ciudad de Guatemala, á los veintiún días del mes de Septiembre de mil novecientos tres.

(L. S.) *Pedro de Carrere y Lembeye.*
(L. S.) *Juan Barrios H.*

78.

ESPAGNE, COLOMBIE.

Convention concernant la reconnaissance mutuelle de la validité des titres académiques et des certificats d'études requises pour l'exercice des professions libérales dans l'autre Etat; signée à Bogota, le 23 janvier 1904.*)

Boletin official del Ministerio de Estado. No. 9. Septembre 1904.

Su Majestad Don Alfonso XIII, Rey de España, de una parte, y el Excelentísimo Sr. Vicepresidente de la República de Colombia, encargado del Poder ejecutivo, de la otra, animados del constante deseo de unir á ambos Países por todos los medios posibles, y considerando uno de éstos el reconocimiento mutuo de validez de títulos académicos y de incorporación de estudios en los dos Estados contratantes, han estimado oportuno celebrar un Convenio especial al efecto, y han nombrado por sus Plenipotenciarios, á saber:

Su Majestad el Rey de España, al Sr. D. Julián María del Arroyo, Su Enviado Extraordinario y Ministro Plenipotenciario en Bogotá, Comendador de número de la Real y distinguida Orden de Carlos III, etc., etc., y

Su Excelencia el Sr. Vicepresidente de la República de Colombia, encargado del Poder ejecutivo, al Sr. Doctor Luis Carlos Rico, Ministro de Relaciones Exteriores,

Quienes, después de haberse comunicado mutuamente sus plenos poderes respectivos, han convenido en los artículos siguientes:

Artículo I

Los nacionales de ambos Países que en cualquier de los Estados signatarios de este Convenio hubieren obtenido título ó diploma expedido por la Autoridad nacional competente para ejercer profesiones liberales, se tendrán por habilitados para ejercerlas en uno y en otro territorio.

Artículo II

Para que el título ó diploma á que se refiere el articulo anterior produzca los efectos expresados se requiere:

1.° La exhibición del mismo debidamente legalizado.

2.° Que el que lo exhiba, acredite, mediante certificado expedido por la Legación ó el Consulado más cercano de su país, ser la persona á cuyo favor se ha extendido.

3.° Que cuando se solicite por el interesado en uno de los dos Países el reconocimiento de la validez de un diploma ó título académico

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*) Les ratifications ont été échangées à Bogota le 5 août 1904.

expedido en el otro país para ejercer profesión determinada, se acredite que dicho diploma ó título habilita también para ejercer esa profesión en el País en que se haya expedido.

Artículo III

Los nacionales de cada uno de los dos Países que fueren autorizados para ejercer una profesión en el otro, en virtud de las estipulaciones del presente Convenio, quedarán sujetos á todos los reglamentos, leyes, impuestos y deberes que rijan en la materia para los proprios nacionales.

Artículo IV

Sin perjuicio de que ambos Gobiernos se communiquen recíprocamente los programas de enseñanza ó se entiendan respecto á cualesquiera detalles administrativos que puedan parecer necesarios, los estudios de asignaturas realizados en uno de los Estados contratantes podrán ser incorporados en los establecimientos docentes del otro, previo el cumplimiento da los requisitos siguientes:

1.° Exhibición por el interesado de certificación, debidamente legalizada, en que conste haber sido aprobadas dichas asignaturas en establecimiento cuyos exámenes ó certificados de aptitud tengan validez oficial en el Estado donde se hayan realizado los estudios.

2.° Exhibición de certificado expedido por la Legación ó Consulado más próximo del País á que el interesado pertenezca, y en el cual se acredito que éste último es la persona á cuyo favor se ha extendido la certificación susodicha.

3.° Informes del Consejo de Instrucción pública en España ó del Ministerio de Instrucción pública de Colombia, haciendo constar los estudios exigidos por las disposiciones nacionales que puedan estimarse equivalentes á los realizados en el extranjero por el que solicite.

Artículo V

Se entiende, sin embargo, que el diploma ó título expedido por las Autoridades de uno de los dos Países contratantes á favor de uno de sus ciudadanos ó de un ciudadano extranjero, no habilita á este ciudadano para que ejerza en el otro País cargo ó profesión reservado á los proprios súbditos ó ciudadanos por la Constitución ó por las leyes.

Artículo VI

Los beneficios derivados del presente Convenio á los nacionales de ambos Países contratantes serán únicamente aplicables á los Países de lengua española que, en su legislación interior ó mediante Convenio, concedan las mismas ventajas á los diplomas ó títulos academicos ó profesionales expedidos respectivamente por cada uno de ellos.

Artículo VII

La duración del presente Convenio será de diez años, á contar desde la fecha del canje de ratificaciones del mismo, y si para entonces no hu-

biere sido denunciado por ninguna de las Partes contratantes subsistirá por otros diez años, y así sucesivamente.

En fe de lo cual los respectivos Plenipotenciarios firman el presente Convenio y lo sellan con sus sellos particulares en Bogotá á 23 de Enero de 1904.

(L. S.) *Julián María del Arroyo.*
(L. S.) *Luis Carlos Rico.*

79.

GRANDE-BRETAGNE, COLONIES DE L'AFRIQUE DU SUD.

Correspondance concernant l'admission des Coolies dans l'Afrique du Sud, du 12 mai 1903 au 15 mars 1904.

Parliamentary Papers. Presented to both Houses of Parliament by Command of His Majesty. Mars 1904.

Sir E. Satow to the Marquess of Lansdowne.
(Received December 21.)

Peking, November 2, 1903.

My Lord,

I have the honour to transmit herewith to your Lordship a copy of a note from the Chinese Government informing me of a communication which has been received from the Chinese Minister in London on the subject of the proposed engagement of Chinese labour for South Africa, and the necessity of framing Regulations for its control.

I have &c.
(Signed) *Ernest Satow.*

Inclosure.

Prince Ching to Sir E. Satow.

Sir, Peking, October 23, 1903.

The Board has received a letter from Chang Ta-Jên, Chinese Minister to England, to the effect that it is desired to invite Chinese labour for the opening of mines and other work in British South Africa, and that proper Regulations should be drawn up in accordance with Treaty, for the affording of due protection.

The Board have the honour to observe that by the Vth Article of the Treaty of 1860, between China and Great Britain, it is provided that Chinese in all the provinces choosing to take service in the British Colonies or other parts beyond sea, are at perfect liberty to enter into engagements

with British subjects for that purpose, and to ship themselves and their families on board any British vessel at any of the open ports of China. Also that the provincial authorities concerned shall, in concert with His Britannic Majesty's Representative in China, frame such Regulations for the protection of Chinese emigrating as above, as the circumstances of the different open ports may demand.

Thus, when Chinese labour is invited Regulations should by the Treaty be framed by the two Powers for the common advantage of both. And as there is now a scheme for inviting Chinese labour to British South Africa, satisfactory Regulations should be settled by the British Foreign Office and Chang Ta-Jên to be followed and observed.

I beg that the following may be communicated to His Majesty's Secretary of State, and also that I may be favoured with a reply to this note.

I avail, &c.

Colonial Office to Foreign Office. (Received January 28.)

Sir, Downing Street, January 27, 1904.

I am directed by Mr. Secretary Lyttelton to transmit to you, to be laid before the Marquess of Lansdowne, the accompanying copy of a draft Ordinance which has been brought into the Transvaal Legislative Council, for regulating the introduction into that Colony of Asiatic labour. The draft represents the form in which the Ordinance was placed before the Council, and Lord Lansdowne will observe that Lord Milner is anxious, if possible, to learn whether its provisions are likely to be acceptable to the Chinese Government. Accordings to press telegrams the Ordinance has already got through the Committee stages.

2. The satisfactory working of the Ordinance, if it comes into operation, will largely depend upon the Regulations framed under it, as to which it would be desirable that the Chinese Government should be consulted, and negotiations entered into in accordance with the wish of that Government, as indicated in Prince Ching's letter to Sir E. Satow of the 23rd October last. But it would be of advantage if at the outset, and without delay, the Chinese Minister could be invited to give his views on the legislation which is being proposed in order to ascertain whether Regulations acceptable to his Government could be framed on the basis of this Ordinance in the event of His Majesty's Government deciding to sanction it.

3. The position of His Majesty's Government in the matter is that it has sanctioned the introduction of the Ordinance, but does not propose to arrive at a final decision in regard to it until it has had the opportunity of considering the law as passed.

I am, &c.

(Signed) *Fred. Graham.*

Foreign Office to Colonial Office.

Sir, Foreign Office, January 30, 1904.

I have laid before the Marquess of Lansdowne your letter of the 27th instant respecting the draft Ordinance which has been brought into the Transvaal Legislative Council for regulating the introduction into that Colony of Asiatic labour.

His Lordship observes that the Secretary of State for the Colonies is anxious that the Chinese Minister here should furnish His Majesty's Government with his views on the legislation proposed, and it appears to him that, with a view to avoid the delay of discussion by correspondence, the best course would, in these circumstances, be to send the Ordinance to Chang Ta-Jên with a suggestion that if there are any points in it on which he requires further explanation they should be provisionally discussed by a Committee, on which the Chinese Legation and the Foreign and Colonial Offices should be represented.

I am to inquire whether this course of procedure meets with Mr. Lyttelton's concurrence.

I am, &c.
(Signed) *F. H. Villiers.*

Colonial Office to Foreign Office. (Received February 3.)

Sir, Downing Street, February 2, 1904.

I am directed by Mr. Secretary Lyttelton to acknowledge the receipt of your letter of the 30th ultimo, and to state that the concurs in the proposal that the Chinese Minister should be furnished with a copy of the draft Ordinance for regulating the introduction of Asiatic labour into the Transvaal. I am to suggest that, in order to save time, it would be well in sending the draft to ask the Chinese Minister the question whether the Ordinance is one on which Regulations acceptable to his Government could be framed. If he answers in the affirmative, the Conference proposed in your letter would follow.

I am, &c.
(Signed) *H. Bertram Cox.*

The Marquess of Lansdowne to Chang Ta-Jên.

Sir, Foreign Office, February 4, 1904.

I have the honour to inform you that, on the 23rd October last, Prince Ching addressed, a note to His Majesty's Minister at Peking to the effect, that, in view of the reported desire of His Majesty's Government to invite the immigration of Chinese labourers into British South Africa for service in the mines, it was desirable that Regulations should, in accordance with Article V of the Anglo-Chinese Treaty of 1860, be drawn up to provide for the proper supervision and protection of such immigrants.

The note then proposed that the Regulations should be settled between you and this Department.

I have now the honour to transmit to you the draft of an Ordinance which has been prepared in the Transvaal Colony governing the introduction into that Colony of unskilled non-European labourers, and to inquire whether this Ordinance is, in your opinon, one on which Regulations acceptable to the Chinese Government could be framed.

As the matter is pressing, I beg leave to request that you will favour me with a reply at your earliest convenience.

I have, &c.
(Signed) *Lansdowne.*

Chang Ta-Jên to the Marquess of Lansdowne.
(Received February 12.)

Chinese Legation, London, February, 11, 1904.

My Lord,

I have the honour to acknowlege the receipt of your Lordship's note of the 4th instant, forwarding me the draft of an Ordinance prepared in the Transvaal Colony for regulating the introduction into that Colony of unskilled non-European labourers, and asking my opinion as to whether that Ordinance would be acceptable to the Chinese Government as a basis for the Regulations which my Government have authorized me to draw up with your Lordship for the purpose of giving effect to Article V of the Anglo-Chinese Treaty of 1860.

The Ordinance in question being a measure affecting the internal economy of the Transvaal, I have to recognize the courtesy and consideration of His Majesty's Government in consulting me with regard to it before giving it the force of law. A similar course on the part of some of the self-governing Colonies who have passed laws offensive to the Chinese Government would have obviated the necessity for much of the acrimonious correspondence from this side which has taken place with respect to the legislative indignities which have been heaped on Chinese immigrants into some of the self-governing British Colonies.

I haven given the draft Ordinance, which is the one referred to in Lord Milner's note of the 4th January, my careful consideration, and I am glad to be able to inform your Lordship that I do not find anything in it which is likely to conflict with anything I shall have to propose when we come to negotiate the „Réglement" for the supervision and protection of Chinese immigrants provided for in Article V of the Treaty of Peking.

But as in the course of these negotiations I shall have to propose the appointment of Consuls or Consular Agents to watch over the interests and welfare of the immigrants, I would respectfully venture to suggest, for the consideration of His Majesty's Government, the insertion, at any convenient places in the Ordinance of the following additions and alterations:

1. That the Consul or Consular Agent of the country of the immigrant shall have power to visit the mines and inspect the places prepared for the accommodation of the immigrants at all reasonable times, and to make representations to the authorities on the subject of any matter affecting the comfort and well-being of the immigrant which may appear to him necessary.

2. That in no case shall it be allowable for the employer or his servant to inflict corporal punishment on the immigrant, and that any violation of this provision shall be punishable at law as a common assault.

3. That the person styled „the importer" shall be a bonâ fide employer of labour, and not a mere dealer or speculator in labour; and that the transfer or assignment of the labourer to another employer shall only be made with the consent of the immigrant and the approval of the Consul or Consular Agent of his country.

This is necessary in order to prevent the immigrant from being made a mere chattel or article of commerce.

4. That repatriation shall take place to the port of embarkation in the country of the immigrant, and not merely to his „country of origin", as provided in the Ordinance.

5. That the immigration shall be made only in British bottoms or ships of the nation to which the immigrant belong, and under the Regulations instituted by the British Board of Trade for ships employed in carrying immigrants.

The adoption of these suggestions by the authorities of the Transvaal would much contribute to render the Ordinance more acceptable to the Imperial Government of China, and to the gaining of the confidence of intending emigrants; more especially in provinces whose inhabitants have not hitherto been in the habit of emigrating to foreign countries.

I have, &c.

(Signed) *T. J. Chang.*

Colonial Office to Foreign Office. (Received February 13.)

Sir, Downing Street, February 12, 1904.

I am directed by Mr. Secretary Lyttelton to acknowledge the receipt of your letter, inclosing a copy of a note to the Chinese Minister, dated the 4th instant, with reference to the Transvaal Labour Importation Ordinance. I am to suggest that it might be well to forward to the Chinese Minister the Parliamentary Paper inclosed, which contains an amended draft of the Ordinance.

I am, &c.

(Signed) *H. Bertram Cox.*

The Marquess of Lansdowne to Chang Ta-Jên.

Sir, Foreign Office, February 13, 1904.

With reference to my note of the 4th instant, I have the honour to transmit to you a copy of a Parliamentary Paper containing a copy of the Draft Ordinance to Regulate the Introduction into the Transvaal of unskilled non-European labour, which has been amended in accordance with the last telegrams received from Lord Milner.

I have, &c.
(Signed) *Lansdowne.*

Colonial Office to Foreign Office. (Received February 15.)

Sir, Downing Street, February 15, 1904.

I am directed by Mr. Secretary Lyttelton to acknowledge the receipt of your letter of the 12th instant, inclosing a copy of a note from the Chinese Minister respecting the Ordinance for the importation of Asiatic labourers into the Transvaal.

2. I am to request you to inform Lord Lansdowne that the substance of this note is being communicated by telegraph to the Governor of the Transvaal, and that it would appear that there should be no difficulty in framing Regulations under the Ordinance as passed by the Legislative Council which will satisfy the objects and requirements of the Chinese Government, which seem to be reasonable and calculated to promote the success of the immigration.

3. I am therefore to suggest that the Conference referred to in your letter as being the act means of drawing up the proposed Regulations should meet at the Foreign Office at the earliest possible date. A further communication will shortly be addressed to you as to the representative of this Department at that Conference.

I am, &c.
(Signed) *M. F. Ommanney.*

High Commissioner Viscount Milner to Mr. Chamberlain.
(Received 11.50 p.m., 12th May 1903.)

Telegram.

12th May. No. 136. In reply to a telegram from me asking whether we could obtain 10,000 coolies from India for our new railways who should be repatriated at the end of their term of service, the Viceroy informs me that the question of repatriation of coolies has been referred to Secretary of State for India. I hope you will be able to induce Secretary of State for India to agree to repatriation of coolies. As I told Viceroy, we can give absolute guarantee of their good treatment while here and we can pay high wages. The only thing we cannot do,

in view of public feeling tn this country, is to bring coolies here without promise that shall be sent back when their term is over.

Question of labour is beginning to assume a really alarming aspect. There are simply not enough natives in South Africa, if they all worked, for our growing requirements, and wherever we turn outside for fresh supplies, with the solitary exception of British Central Africa, from which we may get at most 10,000, we are met with a non possumus. I have to point out that this country has taken upon its shoulders an enormous burden of debt in reliance on its enormous resources. But it cannot develop those resources without labour and if we are destined to meet with a refusal wherever we turn to look for labour we must soon be landed in financial embarrassment. The avoidance of this is, it seems to me, a matter of more than merely local concern. There is no doubt that coolies for the railways would afford us considerable relief by setting free natives for mines and agriculture. It is also, in my opinion, certain that the introduction of Indian labour for the purpose for which I want it would greatly facilitate a reasonable settlement of the British Indian question here, as it would tend to remove some of the intense local prejudice against Indians. At present we are in the absurd position of being flooded by petty Indian traders and hawkers, who are of no benefit whatever to the community, and not allowed to have Indian labourers, whom we greatly need.

Mr. Chamberlain to High Commissioner Viscount Milner.

My Lord, Downing Street, May 23, 1903.

I have the honour to acknowledge the receipt of your telegram of the 12th instant, in which you make a proposal for the employment of 10,000 coolies for the new railways, which are to be constructed immediatety in the Transvaal and in the Orange River Colony, and ask me to endeavour to obtain the concurrence of the Secretary of State for India in the scheme, which is based upon the condition that the coolies would be under indenture to be compulsorily repatriated at the end of their period of service.

2. I need scarcely say that, in view of the considerations which you urge, I have given the matter my most careful and sympathetic attention.

3. I fully appreciate the importance of your proposal and the advantages which are likely to accrue from its adoption. The employment of coolie labour, which appears to be well adapted for the work of carrying out railway extensions, would enable the extensions to proceed at a rapid rate, and would thereby be likely to facilitate the early development of the country on its agricultural as well as on its industrial side. The introduction of this form of labour would, therefore, to this extent, benefit all classes and sections of the population of the new Colonies, and would, moreover, have the effect of not disturbing the flow of the existing supply of labour in its present channels, and would tend to obviate a serious

scarcity of labour, which might arise if so large an additional demand were made for manual workers on the part of the Government.

4. Your proposal is, of course, entirely different in character from any hitherto made. It contemplates the introduction of a fixed number of manual labourers for a special purpose and on a strictly temporary footing, provision being made that by the terms of their contract these labourers will return to India at the end of the period of their indenture, and will not be a permanent addition to the population of South Africa. It appears to me, therefore, that the scheme is in no sense an immigration scheme, and is not open to many of the objections which have been entertained and strongly urged by certain sections of the European population to the employment of Asiatics in the mines and elsewhere.

5. At the same time, it is clearly necessary that the step which you recommend, and which would constitute a new departure, should meet with public approval. You will remember that when I was in South Africa, both in my conversations with you and in my public utterances, I indicated that, in my view, in adopting any such important line of policy in the new Colonies, His Majesty's Government would need to satisfy themselves that the essential features were acceptable to the general opinion of the white population, that the new Colonies must be regarded as destined at some date not far distant to enter upon the privileges of self-government, and that, in anticipation of this event, no such serious step should be taken which would be likely to be reversed by an autonomous legislature. This view I have also stated in the House of Commons since I returned from South Africa. So far as I understand there is no positive evidence as to whether your present proposal will be received with favour: there is evidence of a negative kind which points to the possibility of serious opposition, afforded by the recent meetings at Johannesburg and Pretoria, at which protests were made against the introduction of Asiatic labour, though the main objections urged were apparently aimed at Chinese labour and at the employment of Asiatic labour in the mines, the present very special proposal not having been a matter of public knowledge.

6. I am accordingly anxious (bearing in mind the above-mentioned considerations) that the Government should be assured that you would be justified by public opinion in taking this step, and I desire to know in what way you recommend that your proposal might be best ventilated so as to ascertain the real verdict of the public opinion of the Colonies upon it.

I presume that the question would, in any case, be submitted for the consideration of the Legislative Council in each of the two Colonies, and its public discussion by that body will no doubt assist you in arriving at an opinion.

7. Such a submission is made essential in view of the attitude of the Indian Government on the matter. That Government is not prepared

to accede to the request for a large supply of Indian coolies without certain stipulations in regard to the position of Indian traders and the treatment of Indians generally, which at present, in their view, is in a very unsatisfactory state. They make it a condition that the existing legislation should be modified in the sense of the suggestions made in my telegram of August 6th, 1902, which are as follows:

1. The abolition of registration for Indians generally, and the substitution therefor of a measure for keeping out of the Colonies „undesirables" (at present under the laws of the late South African Republic a registration ticket costing £ 3 a year has to be taken out. In the Orange River Colony Indians are not allowed to settle at all).
2. Locations for Asiatics to be restricted to those classes for whom it is required on sanitary grounds.
3. Business outsidne the locations to be permitted to be carried on.
4. The present restrictions on acquisition of real property by Asiatics to be replaced by a general law against speculative acquisition.
5. Better-class Asiatics to be exempted from all special restrictions, and allowed to have Indian servants, to reside with their employers.

8. I have not yet received your own proposals for fresh legislation in modification of the law of the late Republic, and I am not aware whether you have contemplated the feasibility of meeting the wishes of the Indian Government on all these points.

But if it is, in your opinion, practically out of the question to expect that public opinion will agree to this condition at the present time, it will be very difficult, if not impossible, to obtain the consent of the Indian Government to the proposal for the special indenturing of coolies for the railways.

9. The Secretary of State for India feels strongly that the position of British Indians in the two new Colonies is most unsatisfactory, and regards the conditions which he lays down as moderate and reasonable, and it is necessary to convince him that his objections to the present state of things will be fairly met by the reforms which you contemplate before it will be possible to enter on negotiations with the Indian Government with any hope of a favourable result.

I have, &c.,

J. Chamberlain.

Governor Viscount Milner to Mr. Lyttelton.
(Received 6.10 p.m., February 24, 1904.)

(Extract.) Telegram.

24th February. No. 4. Regulations will provide that any coolie wishing to bring his wife and family can do so, or if on arrival here he wishes them brought after him that every facility will be given him to do so at importer's expense.

Mr. Lyttelton to Governor Viscount Milner.
(Sent 5.45 p.m., February 26, 1904.)

Telegram.

(Extract.) (Answered by No. 4.)

26th February. No. 3. It would not be possible, in my opinion, to treat the Chamber of Mines as the employer with whom the contract by the labourer is made, leaving him no option, if he is to be transferred from any one mine on the Rand to any other within the area covered by the properties worked by all the members of the Chamber of Mines. My pledge that transfer should require consent would be rendered illusory thereby.

The next question is whether a group of mines may be treated as an employer. This appears to me to depend upon the precise nature of the control and responsibility exercised by the governing body of the group over the several mines of that group. I presume that the management of each mine is not independent, and that complaints and proceeding taken by the Government in respect of the treatment of labourers would lie against, and be dealt with by, the Board controlling the group of mines and not the Directors of the individual mine, and that the functions of such a Board are not purely financial. The interpretation which Parliament will attach to the pledge which I have given in this matter is that the labourer shall not be transferred from more favourable to less favourable conditions of employment without his consent, and if I am to agree to a group of mines being accepted as the employer I must be satisfied that the control exercised by the central Board of the group is such as to secure practical uniformity of treatment and equal conditions in each of the mines under their control.

Mr. Lyttelton to Governor Viscount Milner.
(Sent 4.10 p.m., February 27, 1904.)

Telegram.

(Extract.) (Answered by No. 5.)

27th February. No. 2. I have stated in Parliament that, pending appointment responsible officer in China paid by Transvaal Government and completion of Regulations for carrying out Ordinance, no complete contract can possibly be made.

Governor Viscount Milner to Mr. Lyttelton.
(Received 10.15 p.m., February 29, 1904.)

(Extract.) Telegram.

29th February. No. 2. Your telegram of 26th February, No. 3. It is not essential that the Chamber of Mines should be employer. The control of the central body of each group over the several mines belonging to it is absolute, and the Government could effectively ensure observance of stipulated treatment and the same treatment on each mine of a given group through such controlling body.

Governor Viscount Milner to Mr. Lyttelton.
(Received 9.20 p.m., February 29, 1904.)

Telegram.

February 29. No. 3. Your telegram of 27th February, No. 2. Have communicated with Chamber of Mines, who fully understand that complete contracts cannot be made or embarkation take place till officer appointed and Regulations approved by you.

Mr. Lyttelton to Governor Viscount Milner.
(Sent 4.15 p.m., March 2, 1904.)

Telegram.

(Extract.) (Answered by No. 7.)

March 2. No. 2. Question in Parliament whether any steps will be taken by Transvaal Government to regulate prices of goods to be supplied to coolies by stores in the compounds in order to prevent their being mulcted of their wages. If the Superintendent of Labourers found it necessary it would, of course, be open to the Lieutenant-Governor to make regulations on the subject, but, as I understand, the labourers will be able to go out to make their purchases. What does Evans advise as to arrangements for stores and shops?

Governor Viscount Milner to Mr. Lyttelton.
(Received 9.45 p.m., March 3, 1904.)

Telegram.

March 3. Nr. 2. Your telegram of 2nd March, No. 2.

1. Stores exist and are permitted on every mine.
2. Trading is open and competition keen.
3. By the Truck Act of 1896 no Director or official is permitted to have any interest in any store.
4. Labourers will be able to purchase their stores and deal in the same manner as other employés at reasonable prices, which are kept down by competition.
5. Evans approves.

Mr. Lyttelton to Governor Viscount Milner.
(Sent 4.30 p.m., March 7, 1904.)

Telegram.

(Answered by No. 10.)

March 7. No. 2. Matter must urgent. Referring to your telegram, 20th February, No. 1. Please telegraph in extenso the text of the particular regulations which embody my pledges and requirements.

Acting Governor Sir H. Bale (Natal) to Mr. Lyttelton.
(Received 3.22 p.m., March 8, 1904.)

Telegram.

March 8. No. 1. I am asked at the request of Ministers to send you the following message, in which I fully concur:

Begins: It is the opinion of Ministers that unless tension occasioned by the short labour supply in the Transvaal is afforded immediate relief, such as the proposed introduction of Chinese under indenture offers, there is grave cause to apprehend that the financial position throughout South Africa will be seriously affected.

Governor Viscount Milner to Mr. Lyttelton.
(Received 1.8 a.m., March 9, 1904.)

Telegram.

(Answered by No. 16.)

March 8. No. 1. Matter most urgent. Your telegram of 7th March, No. 2. Following is text of Regulations which you require;

Begins: Under heading

Recruiting.

1. No person shall recruit Chinese labourers for introduction into the Transvaal unless he is in possession of a licence to do so issued by the official mentioned in Regulation No. 2. Such licence shall be issued on such conditions as the said official may impose in accordance with instructions given to him by the Lieutenant-Governor. All instructions issued to the said official shall be published in the „Gazette."

Under heading

Contracts of Service.

2. Every contract of service entered into under „The Labour Importation Ordinance, 1904," shall be signed by the labourers to be bound thereby in the presence of an official representing the Transvaal Government and stationed at such ports of embarkation as may be notified in the „Gazette." Notice shall be given in the „Gazette" of the name and description of the said officials.

3. The official mentioned in the preceding Regulation shall, before a contract is signed by the labourers, explain to them in their own language the provisions thereof and also the clauses set forth in the schedule attached to the contract and shall certify at the foot of the said contract that he has done so and that the labourers who signed the contract did so voluntarily and without any undue pressure or misrepresentation. No contract shall be registered at the office of the Superintendent not certified as aforesaid.

4. Every contract of service shall be signed by the parties thereto in duplicate original in the presence of the official mentioned in the preceding Regulation and shall be as nearly as possible in the form set forth in Form No. 1 to these Regulations, and a certified copy of such contract translated into the Chinese language shall be delivered to each labourer by the said official. One duplicate original of the said contract shall be delivered by the said official to the importer or his agent who signed the said contract and the other duplicate original shall be forwarded by the said official to the Superintendent.

5. No such contract shall be signed by labourers until they have been examined by a qualified medical practitioner and certified to as being mentally and bodily sound.

6. It shall be competent for a labourer to terminate his contract of service at any time without assigning any reason on tendering to his importer the expenses incurred in introducing him and his wife and children, if uny, into the Transvaal together with a sum sufficient to defray the expenditure necessary in returning them to the port in China at which they embarked. Notice of the termination of any contract by the labourer shall be forthwith given by ths employer to the Superintendent.

Under heading

Transfer of Labourers.

11. 1) Every agreement for the transfer of the service of a labourer shall be in the Form No. 4 to these Regulations and shall be signed by the transferor the transferee and the labourer in the presence of and attested by the Superintendent, who shall before attestation explain the full meaning and effect of such agreement to the labourer.

2) No labourer shall leave the transferor's employment till the agreement for transfer or a certified copy thereof shall be registered at the office of the Superintendent.

3) Every labourer whose services have been transferred shall, before entering the employment of the transferee, deliver up to the Superintendent his passport and the Superintendent shall thereupon issue to him another passport, on which shall be impressed the number given to the labourer in the register of the Superintendent, the name of the transferee, and of the mine or mines at which the labourer is to be employed.

4) Such passport shall be issued without any fee for the unexpired portion of the period for which the passport delivered up by the labourer to the Superintendent held good.

12. The sanction of the Lieutenant-Governor to the transfer of the services of a labourer under Section 11 of the said Ordinance shall be given in writing and only on the production of a certificate signed by the Superintendent that the agreement as to transfer has been explained to the labourer and that he consents thereto and has signed the same.

13. In the transfer of labourers as far as may be possible members of the same family and neighbours from the same village and persons who may agree in representing themselves to be friends and associates shall not be separated from each other.

Under heading

Passages of Labourers to South Africa.

14. Every Chinese labourer who has signed a contract of service shall be carried from the port of embarkation of the Port of Durban in Natal in a ship whose master holds a certificate from the official mentioned in Regulation No. 2. Such certificate shall only be granted on similar conditions to those prescribed in Ordinances 1899 to 1901 in force in Hong Kong for the granting of certificates to masters of ships for the conveyance of Chinese immigrants.

Under heading

Arrival of Labourers at Durban.

15. 1) On arrival of such ship at Durban the said labourers and their wives and children accompanying them shall land and be medically examined in accordance with such laws and regulations as may be in force in Natal.

2) The Superintendent or an Inspector authorized by him shall meet all labourers arriving at Durban and make arrangements with the proper authorities for the conveyance of such labourers with their wives and children to the Witwatersrand disdrict.

3) No labourer arriving at Durban in a ship other than one whose master has obtained the certificate mentioned in Regulation No. 14 shall be introduced into the Transvaal. Before any labourers are allowed to land the master of such ship must produce his certificate to such official as may be appointed to proceed on board and demand it.

4) The Superintendent or an Inspector authorized thereto by him shall satisfy himself that every labourer arriving at Durban for introduction into the Transvaal signed his contract of service in accordance with requirements of Regulation No. 3.

5) If the Superintendent or Inspector is satisfied with regard to any labourer that this contract does not comply with requirements of Regulation No. 3, and that after understanding the said conditions and provisions as aforesaid he is unwilling to proceed to the Transvaal under his contract, the said labourer with his wife and children, if any, shall be returned to the port in China at which he embarked at the expense of his importer, and the Superintendent or Inspector, as the case may be, shall make the necessary arrangements for such return.

Under heading

Care and Treatment of Labourers when Sick.

21. Every employer shall provide his labourers and their wives and children residing on his premises with medicine and medical attendance during illness, and any employer who neglects to do so shall for every such offence be liable to a penalty not exceeding £ 50 and in default of payment to imprisonment for a period not exceeding three months and shall further be liable to pay any reasonable expense incurred by the Superintendent in providing such medicine and medical attendance.

Under heading

Wages.

24. The wages of every labourer shall be plaid monthly in current coin of the realm in accordance with his contract and no payment of wages to a labourer shall be of any force or effect unless the same has been made as aforesaid.

25. No employer shall deduct any sum from the wages of any labourer in respect of monies paid during his term of service, save and except such sum as may have been advanced to the labourer before arriving in the Transvaal and certified to by the official before whom the contract of service is signed, unless such monies have been paid with the consent in writing of an Inspector or Magistrate.

26. No employer of a labourer shall charge him with the payment of any monies on account of stores supplied to such labourer or deduct any sum in respect thereof from the wages due to him.

27. If the wages of a labourer are due an Inspector may demand payment of the same from the employer; and if such wages remain unpaid for a period of fourteen days after demand has been so made, the Inspector may sue for and recover the same on behalf of the labourer in any competent Court.

Under heading

Women and Children.

33. Every labourer shall be entitled to be accompanied by his wife and children under the age of 10 years at the expense of the importer; and every labourer who, after being introduced into this Colony, desires his wife and children under the age of 10 years to join him in the Transvaal may, provided that before or at the signing of his contract such labourer shall have registered with the official before whom the contract is signed the names and residence of his wife and children and the respective ages of the children, require his employer to introduce them at his, the labourer's expense and on the employer refusing to do so the labourer shall be entitled to terminate his contract and thereupon shall be returned to China in pursuance of his contract at the expense of the importer.

34. In any case in which the services of a labourer are transferred from the importer to some other person who holds a licence to import

labourers, the wife and children of such labourer shall not be separated from him but the transferee shall provide proper accommodation for such wife and children on the premises on which the labourer is employed and shall be liable for the expense incurred in returning the wife and children of such labourer to China in case such labourer dies while in the service of such transferee as aforesaid or any of the events happen during such service which render such labourer liable under the Ordinance to be returned to his country of origin.

Under heading

Return of Labourers to China.

39. Every labourer on being returned to China shall be returned only in a ship the master of which is in possession of a licence authorizing him to carry labourers.

40. The said licence shall be issued by an official authorized thereto and stationed at Durban in respect only of any ship in which conditions exist similar to those required under Regulation No. 14 in ships carrying labourers from China to Durban. — Ends.

Mr. Lyttelton to Governor Viscount Milner.
(Sent 9.5 p.m., March 9, 1904.)

Telegram.

(Answered by Nos. 13 and 14.)

March 9. No. 1. My telegram, 22nd February, No. 2. I am prepared to sanction Ordinance on receiving your assurance that you are satisfied that arrangements for reception and accommodation of immigrants can be completed in the interval between embarkation in China and arrival in Transvaal, and on further assurance to me that Regulation 33 has been altered, so as to impose cost of introducing wives and families following labourers on the employer in accordance with my pledge that reasonable facilities will be given and with statement in your telegram of 24th February, No. 4, that Regulations will provide that any coolie wishing to bring his wife and family can do so and if on arrival here he wishes them brought after him that every facility will be given him to do so at importer's expense.

Assent to Ordinance when given will, I fear, not render it possible to embark labourers from China, seeing that, as I explained in my telegram of 27th February, No. 2, no final contracts can be made pending the completion of the Regulations and settlement of arrangements in China.

I hope, however, that assent will assist you in other directions.

Governor Viscount Milner to Mr. Lyttelton.
(Received 10.50 p.m., March 10, 1904.)

Telegram.

10th March. No. 1. I received this morning a large deputation representing some thirty public bodies and Associations and about forty

mines in the Witwatersrand district. Public bodies included Town Councils of Johannesburg, Boksburg, and Germiston, Chambers of Trade and Commerce, Stock Exchange Committee, Prospectors and Claim-Holders Association, Associations of mine managers, engineers, chartered accountants, surveyors, architects, &e. They asked me to telegraph to you the following Resolution:

Begins: We desire most earnestly to impress on His Majesty's Government:

a) That it is the interests of the whole white community of this Colony that are at stake, and more especially of the British population engaged in commerce and industry which are dependent on an adequate supply of coloured labour.

b) That so far from the importation of unskilled labour diminishing the employment of whites it must necessarily augment it.

c) That failing the immediate giving effect to Ordinance an increasing number of white workers will find themselves without the means of livelihood and the present acute financial and industrial depression will be intensely aggravated. Ends.

Deputation consisted of several hundred men, about half being delegates from mines and the rest leading professional and commercial men.

Telegram was read from Bishop of Pretoria expressing regret at absence, and stating his belief that importation of unskilled Asiatic labour under Government Regulations only solution of present difficulties.

In my reply to deputation I expressed my sense of its important and representative character, and my opinion that it would help to remove misunderstanding at home. I also undertook to inform you of the resolution by telegraph. My own feeling is entirely in accord with its terms.

Governor Viscount Milner to Mr. Lyttelton.

(Received 7.38 p.m., March 10, 1904.)

Telegram.

(Answered by No. 16.)

March 10. No. 2. Your telegram of 9th March, No. 1. I am satisfied, after consulting Evans, that arrangements for reception and accommodation of immigrants can be satisfactorily completed in time.

I have also seen mining people and they are ready to bear expense of transport of wives and families following labourers provided that married labourers register names and addresses before leaving China. This provision seems necessary to prevent fraud, and I think you will agree with me that it is reasonable. Regulation 33 will accordingly be altered in this way if you concur.

Governor Viscount Milner to Mr. Lyttelton.
(Received 5.30 p.m., March 11, 1904.)

(Extract.) Telegram.

March 11. No. 1. With reference to the latter part of your telegram, No. 1, of 9th March, I agree that immediate assent will have a political effect even if it does not relieve the economic strain. At the meeting yesterday the underlying feeling of anxiety was very marked, although the speeches were studiously moderate. The deputation was really a remarkable one. It was a genuine popular deputation, half at least being workmen of a fine type, and one of the speeches which were delivered would have carried any workmen's meeting at home.

The action of the Chamber of Commerce, too, was noticeable as representing the feeling of the non-mining men of business. This body, a year ago, decided by a very large majority against imported labour. Yesterday a Resolution to take part in the deputation to me was carried at a very full meeting by 61 votes to 11, and the Chairman himself, an anti-importation man, appeared to present it.

Mr. Lyttelton to Governor Viscount Milner.
(Sent 6 p.m., March 11, 1904.)

Telegram.

(Extract.) (Answered by No. 17.)

March 11. No. 2. It is not clear with whom contract is to be signed by labourer in China. Recruiting is, I understand, to be conducted by agents of Native Labour Association, yet, now that consent of labourer is necessary to each transfer, it seems that labourer should make contract with the Association as agents for an individual mining group, otherwise transfer from Association to individual group will be necessary in case of each man on arrival in Transvaal.

Mr. Lyttelton to Governor Viscount Milner.
(Sent 6.25 p.m., March 11, 1904.)

Telegram.

March 11. No. 3. The Regulations set forth in your telegram of 8th March, No. 1, subject to alteration of Regulation No. 33 as agreed in your telegram of 10th March, No. 2, satisfactorily fulfil my pledges, and you are therefore at liberty to act under the suspending clause and to proclaim in the Gazette that it is His Majesty's pleasure not to disallow the Ordinance.

Governor Viscount Milner to Mr. Lyttelton.
(Received 10 p.m., March 12, 1904.)

(Extract.) Telegram.

March 12. No. 1. Your telegram of 11th March, No. 2. Agent of Witwatersrand Native Labour Association will be agent of each group of mines here and will be instructed before signing contract with a labourer or batch of labourers as to particular group for which he is to sign, so that no transfer will be necessary on arrival of labourers.

Governor Viscount Milner to Mr. Lyttelton.
(Received 3.30 p.m., March 15, 1904.)

Telegram.

15th March. No. 1,

Following is form of contract as amended:

Begins; It is this day agreed between A. B. acting for and on behalf of C. D. carrying on business within the Witwatersrand district Transvaal, South Africa, and the labourers who are signatories to this contract in the presence of E. F, Transvaal Emigration Agent at
and representing the Government of the Transvaal as follows:

1. The said labourers shall proceed to the said Witwatersrand district and shall there work for the said C. D. or for any person to whom the said C. D. may with the consent of the said labourers assign his rights under this contract in accordance with the provisions of the Labour Importation Ordinance 1904 and any Regulations made thereunder for a period of three years to commence from the date of the arrival of the said labourers in the Witwatersrand district subject to the following conditions:

1. Each of the aforesaid labourers so long as he remains in the Transvaal shall be employed only in unskilled labour (meaning thereby such labour as is usually performed in mines in the Witwatersrand district by persons belonging to the aboriginal races or tribes of Africa south of the equator) in the exploitation of within the Witwatersrand district and in particular they shall not be employed in any of the trades or occupations following except for unskilled labour therein to wit:

(Here follows List of Trades as in Schedule to Ordinance.)

2. Each of the said labourers shall for the period fixed in this contract only serve the said C. D. or any other person who has obtained a licence under the Labour Importation Ordinance to introduce labourers and to whom the rights of the said C. D. under this contract may have been duly transferred with the consent of such labourer.

3. Each of the said labourers shall on the determination of this contract by effluxion of time or otherwise be returned without delay at the expense of the said C. D. to (here state port in China at which Labourer embarked).

4. Each of the said labourers shall so long as he remains in the Transvaal be subject to the provisions contained in the Labour Importation Ordinance and the Regulations made thereunder and more especially to such of the said provisions as are substantially seth forth in the Schedule to this contract.

5. The labourers shall be paid at the rate of for each working day of ten hours payable on the completion of every thirty day's work in the currency of the Transvaal to commence from the arrival of the labourers on the premises of the said C. D.

6. Any labourer instead of working for dey wages may if desired both by himself and the said C. D. do piecework at such rate as may be mutually agreed upon between himself and the said C. D., but only the actual days employed on such piecework shall be reckoned in the period of service.

7. The labourer shall be provided free of any charge with housing, water, fuel, medical attendance, and with daily rations on the following scale: $1^1/_2$ lbs. of rice, $^1/_2$ lb. dried or fresh fish or meat, $^1/_4$ lb. vegetables, $^1/_2$ oz. tea, $^1/_2$ oy. nut oil salt or approved substitute at discretion of Superintendent.

8. The said C. D. shall be bound to give work to each of the said labourers for six days in every week except on Sunday and on the days of Chinese festivals mentioned in paragraph 16 and on days when it is impossible for work to be done by reason of bad weather or other cause, and if any labourer willing and able to work has no work given to him to do on any day not included in the aforesaid exceptions he shall be entitled to his full day's working wages for every day so lost to him provided always that by mutual consent one or more days' leave may be given and taken without wages.

9. Each of the said labourers in the absence of any express agreement to the contrary and except in the case of sickness or of such bad weather or other good cause beyond his control as prevents his working shall be bound to work for ten hours in every twenty-four by day or night save on Sundays and on the days of Chinese festivals mentioned in paragraph 16.

10. The said C. D. shall not make any deductions from the wages of any of the said labourer(s) in respect of monies paid to him during his term of service save and (?) except such sum as has heen advanced to such labourer by the said C. D. and set opposite his signature to this contract unless such monies have been paid with the consent in writing of an Inspector or Magistrate.

11. There shall not be reckoned in any labourer's term of service any period of imprisonment desertion or unlawful absence from work nor shall any labourer be entitled to any wages for any day during which he has been absent from work through sickness or other cause.

12. Each labourer acknowledges to have received from the said C. D. an advance of the amount set opposite to his signature which shall be deducted by instalments from his pay at the rate of.

13. In the avent of any labourer being killed or permanently injured in the course of his employment compensation will be plaid by the said C. D. to him or to his next-of-kin as the case may be at following rates: In case of death, £ ; in case of permanent total disablement, £ ; in case of permanent partial disablement, £ .

14. Any labourer may at any time terminate this contract without assigning any reason on tendering to the said C. D. the expenses incurred in introducing him and his wife and children into the Transvaal, together with a sum sufficient to defray the expenditure necessary in returning them to (here state port in China at which labourer embarked).

15. Every labourer shall be entitled to be accompanied by his wife and children under the age of 10 years at the expense of the said C. D., and every labourer who after being introduced into this Colony desires his wife and children under the age of 10 years to join him in the Transvaal may, provided that before or at the signing of his contract such labourer shall have registered with the official before whom this contract is signed the names and residence of his wife and children and the respective ages of the children, require the said C. D. to introduce them at his (the said C. D's.) expense, and on the said C. D. refusing to do so the labourer shall be entitled to terminate his contract and thereupon shall be returned to (state port of embarkation) in pursuance of his contract at the expense of the said C. D., provided always that the wife and children of a labourer shall be maintained at his own expense after his arrival at the premises of the said C. D. where he is to be employed.

16. The Sundays and following Chinese festivals shall be holidays: Chinese New Year 3 days, Dragon Boat Festival 1 day, Full Moon Festival 1 day, Winter Solstice Festival 1 day.

Signed A. B. on behalf of C. D.

Each Labourer must here sign his name or make his mark.

at on this the day of Ends.

Following is amended form of licence to indroduce labourers:

Begins: In pursuance of the provisions of the Labour Importation Ordinance 1904 I hereby authorize (here give name and description of

person to whom licence is granted) to introduce into the Witwatersrand District through the port of Durban, Natal (state number of) labourers from the port of (state name of port of embarkation of labourers in China or Hong Kong) to be carried to Durban in the ship (state name of ship and of owner or charterer thereof) to be employed in unskilled labour only in the (?exploitation) of minerals at the following mines situated in the Witwatersrand District (here state mines at which labourers are to be employed with the number of labourers if possible at each mine). This licence is granted on the terms and conditions of the Labour Importation Ordinance, 1904, and any Regulations made thereunder and more particularly on the condition that the labourers to be introduced under this Ordinance shall be carried from the port in China or Hong Kong at which they embark for Durban in any ship the master of which holds a certificate granted by the Transvaal Emigration official at the port of embarkation under Regulation No. 14 of the Regulations issued under the said Ordinance.

This licence may be cancelled and the holder thereof disqualified from again holding a licence on breach by him of any of the conditions on which the licence is issued.

Given under my hand and seal at this day of

Signed,

Lieutenant-Governor.

N.B. This licence is to be returned to the Superintendent when the number of labourers mentioned has been introduced. Ends.

Appendix.

I.

(No. 38 of 1902.)

Indemnity and Peace Preservation Ordinance, 1902.

Whereas it is desirable to withdraw Martial Law from this Colony and to indemnify acts matters and things in good faith advised commanded ordered directed or done while Martial Law was in force:

And whereas it is desirable in view of the withdrawal of Martial Law to make special provision for the maintenance of good order and government and the public safety of this Colony during such time as circumstances may require:

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

1. The following expressions in inverted commas shall have the meaning placed opposite to them:

„Constabulary“ shall mean the South African Constabulary.

„Police Officer“ shall mean any Officer of the Constabulary or Town Police not under the rank of Captain or Inspector respectively.

2. (1) From and after the date of the taking effect of this Ordinance Martial Law shall be and is hereby withdrawn from this Colony and all Proclamations and Regulations issued under the authority of Martial Law and all Proclamations signed by the Military Governor of Pretoria or Johannesburg shall become ipso facto of no force or effect.

(2) Subsections (1) and (2) of the Proviso to Section sixteen of the „Administration of Justice Proclamation 1902" shall be and are hereby repealed.

3. It shall be lawful for the Governor at any time by Proclamation in the Gazette to withdraw any district of this Colony or any portion of a district from the operation of Part II. of this Ordinance or any portion thereof; such Proclamation shall also be published in some newspaper circulating in the district and printed copies thereof shall be affixed to the door of the Court House of the Resident Magistrate and of every Police Station in the district; provided always that the Governor may at any time thereafter proclaim that the whole or any portion of Part II. of this Ordinance shall be in force in any district or portion thereof from which it may have been withdrawn; notice of such Proclamation to be given in like manner as is provided in this Section in respect of a Proclamation for withdrawal.

Part I.

4. No action indictment or legal proceeding whatsoever shall be brought or instituted in any of the Courts of this Colony against His Excellency the Governor of the Transvaal or His Excellency the Lieutenant-Governor of the Transvaal or the Officer for the time being Commanding His Majesty's Forces in this Colony or against any person or persons acting under them or any of them respectively in any command or capacity civil or military for or on account or in respect of any acts matters and things whatsoever in good faith advised commanded ordered directed or done for the suppression of hostilities or for the maintenance of good order and Government or for the public safety of this Colony between the date of the commencement of a state of war between His Majesty's Government and the late Governments of the South African Republic and the Orange Free State and the date of the taking effect of this Ordinance; and any such action indictment or other proceeding which may have been commenced at the date of the taking affect of this Ordinance shall be discharged and become and be made void.

5. Every such person aforesaid by whom any such act matter or thing shall have been advised commanded ordered directed or done for the purposes aforesaid shall be freed acquitted discharged released and indemnified against all and every person and persons whomsoever in respect thereof.

6. Every such act matter or thing referred to in the preceding Sections shall be presumed to have been advised commanded vordered directed or done as the case may be in good faith until the contrary shall be proved by the party complaining.

7. The several sentences pronounced by Military Courts or by Courts established by proper Military authority and holden in this Colony during the existence of Martial Law upon persons tried by such Courts for offences against the law of this Colony as well as for contraventions of Martial Law Regulations are hereby confirmed; and all such persons confined in any prisons or other legal places of confinement in this Colony under or by virtue of such sentences shall continue liable to be confined there or elsewhere as the Lieutenant-Governor may direct until the expiration of the sentences respectively passed upon them or until their discharge by lawful authority; and such sentences shall be deemed to be sentences passed by duly and legally constituted Courts of this Colony and shall be carried out or otherwise dealt with in the same manner as the sentences of duly constituted Courts of Law of this Colony.

8. All persons who have been in good faith and under proper Military authority arrested for High Treason or other crime in this Colony during the existence of Martial Law and all persons who have been similarly committed to gaol and are there detained to await their trial for High Treason or other crime shall be deemed to have been lawfully arrested committed to and detained in gaol in the same manner and to the same extent as if they had been arrested and committed to gaol on warrants issued by persons authorised by Law to issue them.

9. Every recognizance taken during the existence of Martial Law upon which a person accused of High Treason or other crime has been admitted to bail shall be and is hereby declared to be of full force and effect.

Part II.

Special Provisions for Public Safety.

10. It shall be lawful for any Magistrate Assistant Magistrate or Police Officer in any district to arrest or cause to be arrested without warrant any person in such district on reasonable suspicion of his having committed treason or any of the offences mentioned in Section eighteen of this Ordinance and to lodge such person in any gaol in the said district.

11. Upon the written order of such Magistrate Assistant Magistrate or Police Officer as aforesaid the gaoler of the said district shall be bound to receive and detain in custody in the goal thereof any such person arrested as aforesaid for such time as is specified in the said order or if no time is specified therein until the said gaoler receives and order from the Attorney-General or Official on whose order the said person is detained for such person's release notwithstanding that no charge is preferred against such person either at the time of his arrest or of his reception into gaol; provided that every such person shall be entitled to his discharge from gaol or custody unless within twenty-one days after such imprisonment criminal proceedings shall be commenced against him.

12. As soon as a person is received into custody under the last preceding section the Magistrate shall forthwith submit to the Attorney-General a statement in writing containing the full name address and occupation of such person as far as can be ascertained and also a copy of the order on which such person was received into gaol together with all the information in his possession on which such order was issued.

13. Any person liable to arrest under Section ten who shall have removed from any district in which that Section is in force may be arrested in any other district; and the Magistrate of such last-mentioned district or any Police Officer therein shall on the application of the Magisirate of the first mentioned district cause such person to be arrested without warrant and detained in the goal of the district in which he was arrested or removed to she gaol of the district from which such application as aforesaid was made. Upon such arrest the provisions of Sections eleven and twelve shall mutatis mutandis apply.

14. Should any person arrested under Sections ten or thirteen apply to the Supreme Court Witwatersrand High Court or to any Judge of the Supreme Court for his discharge from custody before the expiration of the twenty-one days mentioned in Section eleven it shall not be competent for any such Court or Judge to grant such discharge if satisfied that reasonable grounds exist for suspecting that the said person has committed treason or any of the offences mentioned in Section eighteen of this Ordinance.

15. It shall be lawful for the Resident Magistrate or Assistant Resident Magistrate in any district or for any Police Officer serving therein on any information that there is reasonable cause to suspect that any person within such district is in the possesion of any document written or printed of a seditious or treasonable character to search or cause to be searched any land building or premises of any kind whatever situated in such district or any wagon cart or other vehicle on or in which there are reasonable grounds for suspecting that such document may be found and to seize any such document as aforisaid withut any warrant being issued or obtained for such search or seizure.

16. Any person hindering or obstructing any Police Constable or other authorised person while engaged in any search under the provisions of this Ordinance shall be liable on conviction to be improsoned with or without hard labour for a period not exceeding one year or to be fined a sum not exceeding one hundred pounds or to both such fine and imprisonment.

17. It shall be lawful for the official in charge of any Post Office to intercept any letter or other document or parcel sent through the post which he has reasonable grounds to suspect contains treasonable or seditious matter; such letter document or parcel shall be forthwith sent by him to the Resident Magistrate of the District together with a statement in writing of the grounds of suspicion do exist as aforesaid; and in case such letter document or parcel be found on being opened to contain treasonable

seditious or other criminal matter it shall be forwarded by the Resident Magistrate to the Attorney-General to take such action thereon as he may deem advisable; and in case such letter document or parcel shall be found not to contain treasonable seditious or other criminal matter it shall after being endorsed by the said Magistrate be forwarded to its destination.

18. Any one who speaks seditious words or docs seditious acts or publishes a seditious libel or is party to a seditious conspiracy shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years or if he has previously been convicted of any offence under this section to imprisonment with or without hard labour for a period not exceeding seven years.

Seditious words are words expressive of a seditious intention.

Seditious acts are acts done with seditious intention.

A seditious libel is a libel expressive of a seditious intention.

A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention.

A seditious intention is an intention

1) To bring His Majesty or the Governor or Lieutenant-Governor of the Transvaal in person into hatred or contempt; or
2) To excite disaffection against His Majesty or the Governor or Lieutenant-Governor in person or the Government and Constitution of the United Kingdom or of the Transvaal as by law established or the administration of justice therein; or
3) To incite His Majesty's subjects to attempt to procure otherwise than by lawful means the alteration of any matter in the Transvaal by law established; or
4) To incite any person to commit any crime in disturbance of the public peace; or
5) To raise discontent and disaffection amongst His Majesty's subjects; or
6) To promote feelings of ill-will and hostility between different classes of His Majesty's subjects:

   Provided that no one shall be deemed to have a seditious intention only because he intends in good faith;

   a) To show that His Majesty or the Governor or Lieutenant-Governor has been mislead or mistaken in his measures; or
   b) To point out errors or defects in the Government or Constitution of the United Kingdom or the Transvaal as by law established or in the administration of justice therein with a view to the reformation of such alleged errors or defects; or to urge His Majesty's subjects to attempt to procure by lawful means the alteration of any matter in the Transvaal by law established.

19. Afther the date of this Ordinance no person shall enter this Colony without a permit granted under the terms of this Ordinance unless

a) He was resident and within this Colony or the Orange River Colony on the 31st of May 1902 and has not since that date been expelled from or ordered to leave this Colony or the Orange River Colony.

b) He has since the 31st of May 1902 and before the date of this Ordinance received a permit or other formal authorisation to enter this Colony from some duly constituted authority.

c) He is a person coming within the provisions of Article 2 of the Terms of Surrender signed at Pretoria on the 31st of May 1902, and published in the Gazette Extraordinary dated 3rd June 1902.

d) He is a person employed in His Majesty's Naval or Military Service or in the Civil Service or in any Police Force of this Colony or the Orange River Colony.

20. Permits to enter the Colony under this Ordinance shall be granted by such persons as may be authorised to do so by the Governor and shall be in such form as the Governor may direct.

No such permit shall be granted to any person who having been a burgher of the South African Republic or the Orange Free State has not taken the Oath of Allegiance to His Majesty or made some declaration of equivalent import in form approved by the Governor. In all other cases it shall be in the discretion of the Governor to grant or refuse any permit.

21. It shall be lawful for the Colonial Secretary if he has reason to believe that any person is residing or sojourning in this Colony having entered it without proper authority to give notice thereof to any Resident Magistrate and such Magistrate shall thereupon summon such person to appear before him and if such person fails to satisfy the Magistrate that he has obtained a permit under this Ordinance or is exempt under the provisions of Section nineteen from obtaining such permit the Magistrate shall make a written order directing such person to leave the Colony within seven days unless before the expiration of that time he has received permission in writing from the Colonial Secretary to remain in the Colony; such permission shall have the same effect as a permit granted under this Ordinance.

22. (1) If any person in whose case such order has been made is found within the Colony after the expiration of seven days after service of such order without having obtained permission from the Colonial Secretary as aforesaid he may be arrested and brought before a Magistrate and shall upon conviction be sentenced to imprisonment with or without hard labour for a period of not less than one month and not more than six months and with or without a fine not exceeding five hundred pounds

and in default of payment to a further term of imprisonment for a period not exceeding six months.

(2) If any person imprisoned under the terms of the preceding Sub-Section shall remain in the Colony for a period of more than seven days after the expiration of his term of imprisonment or any subsequent term of imprisonment imposed under this Section without obtaining permission in writing from the Colonial Secretary to remain in the Colony he may be arrested and brought before a Magistrate and shall on conviction be sentenced to imprisonment with or without hard labour for a period of not less than six and not more than twelve months and with or without a fine not exceeding five hundred pounds and in default of payment to a further term of imprisonment for a period not exceeding six months.

23. Any person entering this Colony on a permit not issued to him by a proper authority or obtained by him by any fraudulent means shall be liable to imprisonment with or without hard labour for a period not exceeding two years or to a fine not exceeding five hundred pounds or to both such imprisonment and fine.

24. It shall be lawful for the Lieutenant-Governor on its being shewn to his satisfaction that there are reasonable grounds for believing that any person within this Colony is dangerous to the peace and good Government of the country to issue an order under the hand of the Colonial Secretary to such person to leave the Colony within fourteen days after service of such order. If on the expiration of the said period such person shall be found within the Colony he shall be proceeded against in similar manner and be subject to the like penalties as are provided in Section twenty-two of this Ordinance.

25. It shall be lawful for the Lieutenant-Governor to make regulations for all or any of the following purposes and to provide penalties for any breach thereof not exceeding three months or both such fine and imprisonment.

a) For the more effectual carrying out of the provisions of this Ordinance.

b) For preventing the wilful or reckless spreading of false intelligence calculated to create panic or alarm.

c) For prohibiting the holding of meetings at which there is reasonable suspicion that seditious speeches will be made.

d) For prohibiting the introduction into this Colony or circulation therein of any printed matter of a treasonable or seditious character.

Any regulations made under this section may be for any one or more districts, but shall only be of force after publication in the Gazette.

26. Nothing in this Ordinance contained shall be deemed or taken to interfere with or to limit the power of the Governor to proclaim Martial Law throughout this Colony or in any district or districts thereof.

27. This Ordinance may be cited for all purposes as the „Indemnity and peace Preservation Ordnance 1902."

Passed in Council the Twelfth day of November, One thousand Nine hundred and Two.

Gerard Craig Sellar,
Clerk of the Council.

Authenticated under my Hand and Seal:

Arthur Lawley,
Lieutenant-Governor.

Pretoria, 14th November, 1902.

Assented to:

Milner, Governor.

Johannesburg, 15th November 1902.

II.

(No. 5 of 1903.)

Ordinance.

To Amend the Peace Preservation Ordinance of 1902.

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice aud consent of the Legislative Council thereof as follows:

1. Sections nineteen twenty twenty-one twenty-two twenty-three and twenty-four of the Indemnity and Peace Preservation Ordinance No. 38 of 1902 are hereby repealed.

2. After the date of this Ordinance no person shall enter or reside in this Colony unless he is possessed of a permit issued to him under the provisions of this Ordinance or can give satisfactory evidence that he belongs to one of the following classes:

1) persons resident and actually in this Colony or the Orange River Colony on the 31st May 1902;
2) persons who before the date of this Ordinance have received a permit or other formal authorisation to enter this Colony from some person duly authorised to issue the same:
3) persons coming within the provisions of Article two of the Terms of Surrender signed at Pretoria on the 31st day of May 1902 and published in the Gazette Extraordinary dated 3rd June 1902;
4) persons employed in His Majesty's Naval or Military Service or in the Civil Service or in any Police Force of this Colony or the Orange River Colony;

provided that the exemption in this section contained shall not apply to any person who has been expelled from or ordered to leave this Colony or the Orange River Colony.

3. Permits to enter the Colony shall be in the form prescribed by the Governor and shall be issued by such persons as he may appoint for that purpose.

4. 1) No permit to enter this Colony shall be granted to any person who having been a Burgher of the South African Republic or the Orange

Free State has not taken the Oath of Allegiance to His Majesty or made some declaration of equivalent import in form approved by the Governor.

2) Subject to the above limitation the granting or withholding of permits shall be in the absolute discretion of the Governor.

5. Any person entering or residing in this Colony may be called upon by any member of any Constabulary or Police Force or other person authorised thereto by the Colonial Secretary to produce a permit issued under this Ordinance or to give satisfactory evidence that he belongs to one of the classes exempted from the necessity of having such a permit under the provisions of Section two. If the person so called upon fails to produce such a permit or to give such evidence as aforesaid he may be arrested without a warrant and dealt with as hereinafter provided.

6. Every person so arrested shall with all convenient speed be brought before a Magistrate and if he fails to satisfy the Magistrate that he is duly authorised to enter or reside in this Colony under the provisions of this Ordinance the Magistrate may make an order in writing directing such person to leave this Colony within such time as may be specified in such order provided that if such person declares upon oath that he has already obtained a permit and gives satisfactory reasons for his inability to produce the same or if he declares upon oath that he can produce satisfactory evidence that he belongs to one of the classes exempted from the necessity of obtaining a permit by the provisions of Section two hereof he may be released upon entering into a recognizance with or without sureties to produce before any Magistrate named in such recognizance and within the time stated therein such permit or evidence as the case may be. If such person fails to comply with the condition of his recognizance it shall be forfeited.

8. Any person who may be ordered to leave this Colony and fails to do so within the time specified in the order and any person whose recognizance has been forfeited under the provisions of the last preceding section may be arrested without warrant and brought before a Magistrate and shall upon conviction be sentenced to imprisonment with or without hard labour for a period of not less than one month and not more than six months and with or without a fine not exceeding £ 500 and in default of payment to a further term of imprisonment for a period not exceeding six months.

8. If any person imprisoned under the terms of the last preceding section shall remain in the Colony for a period of more than seven days after the expiration of his term of imprisonment or any subsequent term of imprisonment imposed under this section without obtaining permission in writing from the Colonial Secretary to remain in the Colony the burden of proving which shall be upon him he may be arrested without a warrant and brought before a Magistrate and shall on conviction be sentenced to imprisonment with or without hard labour for a period of not less than six and not more than twelve months and with or without a fine not

exceeding five hundred pounds and in default of payment to a further term of imprisonment for a period not exceeding six months.

9. Any person who

1) obtains or attempts to obtain or incites any person to obtain or aids or abets any person in obtaining a permit by any fraud misrepresentation false pretence falsehood or other improper means;

2) uses or attempts to use or incites any person to use or aids or abets any person in using any permit so obtained;

3) enters or attempts to enter this Colony on a permit so obtained or on a permit not issued to him by proper authority.

shall be liable to a fine not exceeding five hundred pounds or to imprisonment with or without hard labour for a term not exceeding two years or to both such fine and such imprisonment.

10. It shall be lawful for the Lieutenant-Governor on its being shewn to his satisfaction that there are reasonable grounds for believing that any person within this Colony is dangerous to the peace and good government of the country to issue an order under the hand of the Colonial Secretary to such person to leave the Colony within such time after service of such order as may be stated therein. If on the expiration of the said period such person shall be found within the Colony he shall be proceeded against in manner prescribed in sections seven and eight of this Ordinance and shall be subject to the penalties therein provided.

11. This Ordinance may be cited as the Peace Preservation Ordinance 1903 and shall be read as one with the Indemnity and Peace Preservation Ordinance 1902.

Passed in Council the eighteenth day of February One thousand Nine hundred and Three.

Cecil E. Hawes,
Acting Clerk of the Council.

Authenticated under my Hand and Seal:

Arthur Lawley,
Lieutenant-Governor.

Pretoria, 23rd February, 1903.

Assented to:

Milner, Governor.

Johannesburg, 25th February, 1903.

80.

ITALIE, FRANCE.

Convention destinée à assurer réciproquement aux ressortissants des deux Pays, le bénéfice des assurances sociales et les progrès de la législation ouvrière; signée à Rome, le 15 avril 1904.

Gazetta Ufficiale del Regno d'Italia. 31 octobre 1904.

Sa Majesté le Roi d'Italie et le Président de la République française désirant, par des accords internationaux. assurer à la personne du travailleur des garanties de réciprocité analogues à celles que les traités de commerce ont prévues pour les produits du travail, et particulièrement: 1° faciliter à leurs nationaux travaillant à l'étranger la jouissance de leurs épargnes et leur ménager le bénéfice des assurances sociales, 2° garantir aux travailleurs le maintien des mesures de protection déjà édictées en leur faveur et concourir au progrès de la législation ouvrière,

ont résolu de conclure, à cet effet, une convention et ont nommé pour leurs plénipotentiaires:

Sa Majesté le Roi d'Italie,

Son Excellence M. Tommaso Tittoni, Son ministre des affaires étrangères; Son Excellence M. Luigi Luzzatti, Son ministre du trésor; Son Excellence M. Luigi Rava, Son ministre de l'agriculture, de l'industrie et du commerce; Son Excellence M. le comte Enrico Stelluti Scala, Son ministre des postes et des télégraphes;

Le président de la République française,

Son Excellence M. Camille Barrère, ambassadeur de France près Sa Majesté le Roi d'Italie; M. Arthur Fontaine, directeur du travail au ministère du commerce, de l'industrie, des postes et des télégraphes de France;

lesquels, après avoir échangé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des articles suivants:

Art. 1er.

Des négociations seront engagées à Paris, après la ratification de la présente convention, pour la conclusion d'arrangement fondés sur les principes énoncés ci-apres et destinés à régler le détail de leur application, — exception faite pour l'arrangement relatif à la Caisse nationale d'épargne de France et à la Caisse d'épargne postale d'Italie, prévu sous le paragraphe a) ci-dessous, qui sera annexé à la convention.

a) Les fonds versés à titre d'épargne, soit à la Caisse nationale d'épargne de France, soit à la Caisse d'épargne postale d'Italie, pourront, sur la demande des intéressés, être transférés sans frais de l'une des Caisses à l'autre, chacune de ces Caisses appliquant aux dépôts ainsi transférés les régles générales qu'elle applique aux dépôts effectués chez elle par les nationaux.

Un régime de transfert, sur des bases analogues, pourra être institué entre diverses caisses d'épargne privées de France et d'Italie, ayant leur siège dans de grandes agglomérations industrielles ou dans des villes frontières. Sans comporter la gratuité absolue des transferts, ce régime stipulera le concours des Administrations postales, soit gratuit, soit à tarif réduit.

b) Les deux Gouvernements faciliteront, par l'entremise tant des Administrations postales que des Caisses nationales, le versement des cotisations des italiens résidant en France à la Caisse nationale de prévoyance d'Italie et des français résidant en Italie à la Caisse nationale des retraites de France. Ils faciliteront, de même, le paiement en France des pensions acquises, soit par des italiens, soit par des français, à la Caisse nationale italienne, et réciproquement.

c) L'admission des ouvriers et employés de nationalité italienne à la constitution de retraites de vieillesse et peut-être d'invalidité, dans le régime général des retraites ouvrières actuellement élaboré par le Parlement français, ainsi que la participation des ouvriers et employés de nationalité française au régime des retraites ouvrières en Italie, seront réglées aussitôt après le vote de dispositions législatives dans les pays contractants.

La part de pension correspondant aux versements de l'ouvrier ou employé, ou aux retenues faites sur son salaire, lui sera acquise intégralement.

En ce qui concerne la part de pension correspondant aux contributions patronales, il sera statué par l'arrangement, dans des conditions de réciprocité.

La part de pension à provenir éventuellement de subventions budgétaires sera laissée à l'appréciation de chaque Etat et payée sur ses ressources à ses nationaux axant acquis une retraite dans l'autre pays.

Les deux Etats contractants faciliteront, par l'entremise tant des Administrations postales que de leurs caisses de retraite, le paiement en Italie des pensions acquises en France et réciproquement.

Les deux Gouvernements étudieront, pour les ouvriers et employés ayant travaillé successivement dans les deux Pays pendant des périodes minima à déterminer, sans remplir dans aucun des deux les conditions requises pour les retraites ouvrières, un régime spécial d'acquisition de retraite.

d) Les ouvriers et employés de nationalité italienne, victimes en France d'accidents par le fait ou à l'occasion du travail, ainsi que leurs représentants résidant en France, auront droit aux mêmes indemnités que les français, et réciproquement.

Les italiens bénéficiaires de rentes cessant de résider en France, ainsi que les représentants de la victime qui ne résidaient pas en France au moment de l'accident, auront droit à des indemnités à déterminer. Les capitaux constitutifs de ces indemnités, évalués d'après un tarif annexé à l'arrangement, pourront être versés à la Caisse nationale italienne de prévoyance, à charge par elle d'assurer le service des rentes. La Caisse nationale italienne d'assurance contre les accidents du travail acceptera également, suivant tarif conventionnel, pour le risque d'indemnité aux représentants ne résidant pas en France des ouvriers italiens victimes d'accidents, les réassurances des assureurs français désireux de se décharger éventuellement de toutes recherches et démarches à cet égard. Des avantages équivalents seront réservés, par réciprocité, pour les français victimes d'accident du travail en Italie.

e) L'admission des ouvriers et employés italiens, en France, à des institutions d'assurance ou de secours contre le chômage subventionnées par les pouvoirs publics, l'admission des ouvriers et employés français, en Italie, aux institutions de même nature, seront réglées, le cas échéant. après le vote dans les deux pays de dispositions légales relatives à ces institutions.

f) Les arrangements prévus au présent article seront conclus pour une durée de cinq années. Les deux Parties contractantes devront se prévenir mutuellement, une année à l'avance, si leur intention est d'y mettre fin à l'expiration de ce terme. A défaut d'un tel avis, l'arrangement sera prorogé d'année en année, pour un délai d'un an, par tacite réconduction.

Art. 2.

a) Les deux Gouvernements détermineront, pour éviter les erreurs ou les fausses déclarations, la nature des pièces à présenter aux consulats italiens par les jeunes italiens embauchés en France, ainsi que la forme des certificats à fournir aux mairies par les dits consulats, avant délivrance aux enfants des livrets prescrits par la législation sur le travail des enfants. Les inspecteurs du travail se feront représenter les certificats à chaque visite; ils retireront les livrets indûment détenus.

b) Le Gouvernement français organisera des comités de patronage comprenant, autant que possible, des italiens parmi leurs membres, pour les régions industrielles où seront employé en grand nombre de jeunes italiens logés en dehors de leurs familles par des intermédiaires.

c) Les mêmes mesures seront prises pour la protection des jeunes ouvriers français en Italie.

Art. 3.

Au cas où l'initiative serait prise par l'un des deux Etats contractants, ou par l'un des Etats avec qui ils entretiennent des relations diplomatiques, de convoquer divers Gouvernements à une conférence internationale dans le but d'unifier, par des conventions, certaines dispositions des lois protectrices des travailleurs, l'adhésion de l'un des deux Gouvernements au

projet de conférence entraînerait, de la part de l'autre Gouvernement, une réponse favorable en principe.

Art. 4.

Au moment de signer cet accord, le Gouvernement italien prend l'engagement de compléter l'organisation dans tout le royaume, et plus particulièrement dans les régions où le travail industriel, est développé, d'un service d'inspection fonctionnant sous l'autorité de l'Etat et offrant, pour l'application des lois, des garanties analogues à celles que présente le service de l'Inspection du travail en France.

Les inspecteurs feront observer les lois en vigueur sur le travail des femmes et des enfants, et notamment les prescriptions qui concernant: 1°) l'interdiction du travail de nuit; 2°) l'âge d'admission au travail dans les ateliers industriels; 3°) la durée du travail journalier; 4°) l'obligation du repos hebdomadaire.

Le Gouvernement italien s'engage à publier un rapport annuel détaillé sur l'application des lois et règlements relatifs au travail des femmes et des enfants; le Gouvernement français prend le même engagement.

Le Gouvernement italien déclare en outre qu'il a l'intention de mettre à l'étude et de réaliser graduellement la réduction progressive de la durée du travail journalier des femmes dans l'industrie.

Art. 5.

Chacune des deux Parties contractantes se réserve la faculté de dénoncer à toute époque la présente convention et les arrangements prévus à l'article 1er en faisant connaître son entention un an d'avance, s'il y a lieu de reconnaître que la législation relative au travail des femmes et des enfants n'a pas été respectée par l'autre partie, sur les points énoncés spécialement à l'article 4 alinéa 2, faute d'une inspection suffisante, ou par suite de tolérances contraires à l'esprit de la loi, ou que le législateur aura diminué sur les mêmes points la protection édictée en faveur des travailleurs.

Art. 6.

La présente convention sera ratifiée et les ratifications seront échangées à Rome aussitôt que possible.

En foi de quoi, les plénipotentiaires ont signé la présente convention et y ont apposé leurs cachets.

Fait à Rome, en double expédition, le quinze avril mil-neuf-cent-quatre.

(L. S.) *Tittoni.*
(L. S.) *L. Luzzatti.*
(L. S.) *L. Rava.*
(L. S.) *E. Stelluti-Scala.*

(L. S.) *Camille Barrère.*
(L. S.) *Arthur Fontaine.*

81.

RUSSIE, ETATS-UNIS D'AMÉRIQUE.

Arrangement ayant pour but de régler réciproquement la situation des sociétés par actions et autres associations commerciales, industrielles ou financières; signé à St.-Pétersbourg, le 12/25 juin 1904.

Publication officielle de l'Empire russe.

Le Gouvernement Impérial de Russie et le Gouvernement des Etats-Unis d'Amérique ayant jugé utile de régler réciproquement la situation des sociétés par actions (anonymes) et autres associations commerciales, industrielles ou financières, les soussignés, en vertu de l'autorisation qui leur a été conférée, sont convenus de ce qui suit:

1. Les sociétés par actions (anonymes) et autres associations commerciales, industrielles ou financières domiciliées dans l'un des deux pays et à condition qu'elles y aient été validement constituées conformément aux lois en vigueur, seront reconnues comme ayant l'existence légale dans l'autre pays et elles y auront notamment le droit d'ester en justice devant les tribunaux, soit pour intenter une action, soit pour s'y défendre.

2. En tout cas les dites sociétés et associations jouiront daus l'autre pays des mêmes droits qui sont ou seront accordés à des sociétés similaires de tout autre pays.

3. Il est entendu que la stipulation qui précède ne concerne point la question de savoir si une pareille société constituée dans l'un des deux pays sera admise ou non dans l'autre pays pour y exercer son commerce ou son industrie, cette admission restant toujours soumise aux prescriptions qui existent à cet égard dans ce dernier pays.

Le présent arrangement entrera en vigueur le 12/25 Iuin 1904 et il ne cessera ses effets qu'un an après la dénonciation qui en serait faite de part ou d'autre.

Fait en double à St. Pétersbourg, le 12/25 Iuin 1904.

(L. S.) (Signé) *Robert Mc. Cormick.*
(L. S.) (Signé) *Comte Lamsdorff.*

82.

CONGO.

Lois concernant la nationalité des indigènes congolais; données à Ostende, le 21 juin 1904.

Bulletin officiel de l'Etat Souverain du Congo, 1904.

Léopold II, roi des Belges, souverain de l'Etat Indépendant du Congo, à tous présents et à venir, Salut.

Sur la proposition de Notre Secrétaire d'Etat, nous avons décrété et décrétons:

Article 1.

Tout indigène congolais, tant qu'il réside sur le territoire de l'État, conserve sa nationalité congolaise, est soumis aux lois de l'État et reste traité comme sujet de l'État, notamment en ce qui concerne la compétence pénale, l'extradition et l'expulsion, même s'il prétend avoir obtenu, par voie de naturalisation, de résidence à l'étranger ou autrement, une nationalité étrangère ou s'être placé en la dépendance d'un Pouvoir étranger.

Article 2.

L'individu qui, dans le cas de l'article précédent, quitte le territoire de l'État sans esprit de retour, doit en donner avis au Gouverneur Général, à défaut de quoi il reste tenu à toutes ses obligations légales de sujet congolais.

Article 3.

Notre Secrétaire d'Etat est chargé de l'exécution du présent décret

Donné à Ostende, le 21 juin 1904.

Léopold.

Par le Roi-Souverain:
Au nom du Secrétaire d'État:

Les Secrétaires Généraux,
Chevalier *de Cuvelier.*
H. Droogmans.
Liebrechts.

83.

GRAND-DUCHÉ DE LUXEMBOURG, ETATS-UNIS D'AMÉRIQUE.

Déclaration concernant la protection réciproque des marques de fabrique et de commerce, du 23/27 décembre 1904.

Mémorial du Grand-Duché de Luxembourg, du 15 mars 1905. No. 12.

Le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement de États-Unis d'Amérique, désirant assurer une protection complète et efficace à l'industrie manufacturière des sujets et citoyens des deux pays, les soussignés dûment autorisés à cet effet, sont convenus des dispositions suivantes:

Art. 1er. Les sujets et citoyens de l'une des hautes parties contractantes jouiront dans les États ou possessions de l'autre, en ce qui concerne la protection des marques de fabrique et de commerce, des mêmes droits que les nationaux.

Art. 2. Pour assurer à leurs marques la protection stipulée par l'article précédent, les sujets luxembourgeois dans les Etats-Unis d'Amérique et les citoyens des États-Unis d'Amérique dans le Grand-Duché de Luxembourg devront remplir les formalités prescrites à cet effet par les lois et règlements du pays dans lequel la protection est désirée.

Art. 3. Le présent arrangement sera exécutoire dès la date de sa publication officielle dans les deux pays et il demeurera en vigueur jusqu'à l'expiration des douze mois qui suivront une dénonciation faite par

The Government of the Grand-Duchy of Luxemburg and the Government of the United States of America being desirous of securing a complete and effective protection of the manufacturing industry of the subjects and citizens of the two countries, the undersigned, being duly authorized to that effect, have agreed upon the following provisions.

Art. 1. The subjects and citizens of each of the high contracting parties shall enjoy in the dominions and possesions of the other the same rights as are given to native subjects or citizens in matters relating to trademarks.

Art. 2. In order to secure for their marks the protection stipulated for by the preceding article Luxemburg subjects in the United States of America and American citizens in the Grand Duchy of Luxemburg must fulfil the formalities prescribed to that effect by the laws and regulations of the country in which the protection is desired.

Art. 3. The present arrangement shall take effect from the date of its official publication in the two countries and shall remain in force until the expiration of twelve months immediately following a denunciation made

l'une ou l'autre des parties contractantes.

En foi de quoi les soussignés ont signé la présente Déclaration et y ont apposé leurs sceaux.

Fait en double exemplaire à Luxembourg, le 23, et à La Haye, le 27 décembre 1904.

(L. S.) signé: *Eyschen.*

by one or the other of the contracting parties.

In witness whereof, the undersigned have signed the present Declaration and have thereto affixed their seals.

Done in duplicate at Luxemburg, the 23. and in The Hague, the 27 december 1904.

(L. S.) signé: *Stanford Newel.*

84.

ALLEMAGNE, RUSSIE.

Traité pour établir une jonction des chemins de fer respectifs; signé à Berlin, le 6 décembre 1904.*)

Reichsgesetzblatt 1905.

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, au nom de l'Empire Allemand agissant en l'espèce, pour la Prusse et à la demande de cet Etat, et Sa Majesté l'Empereur de toutes les Russies guidés par le désir de favoriser le développement du commerce et du trafic entre les deux Empires par l'établissement d'une jonction entre la ligne Herby-Czenstochow et les chemins de fer prussiens de l'Etat près de Herby, et en vue de régler, d'un commun accord, les conditions dans lesquelles se fera cette jonction, ont nommé les plénipotentiaires suivants, à savoir:

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse,

Monsieur Kirchhoff, Son Conseiller intime supérieur actuel de régence et Directeur ministériel,

Seine Majestät der Deutsche Kaiser, König von Preussen, im Namen des Deutschen Reichs, das hierbei Preussen auf dessen Antrag vertritt, und Seine Majestät der Kaiser von Russland, geleitet von dem Wunsche, die Entwickelung des Handels und Verkehrs zwischen beiden Reichen durch Herstellung einer Verbindung zwischen der Herby-Czenstochauer Eisenbahn und der preussischen Staatseisenbahn bei Herby zu fördern, haben zum Zwecke der Regelung der auf diese Verbindung bezüglichen, eine gemeinschaftliche Feststellung erfordernden Verhältnisse zu Bevollmächtigten ernannt:

Seine Majestät der Deutsche Kaiser, König von Preussen:

Allerhöchstihren Wirklichen Geheimen Ober-Regierungsrat und Ministerialdirektor Kirchhoff,

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*) Les ratifications ont été échangées, le 3 février 1905.

Monsieur Krönig, Son Conseiller intime supérieur de régence,

Monsieur Joeden, Son Conseiller intime supérieur des finances,

Monsieur Nitschmann, Son Conseiller intime supérieur et ingénieur en chef des chemins de fer,

Monsieur Ottendorff, Son Conseiller intime supérieur des finances,

Monsieur Kindermann, Son Conseiller intime de régence,

Monsieur Goetsch, Son Conseiller de légation,

et

Sa Majesté l'Empereur de toutes les Russies,

Monsieur Schabounévitch, Son Conseiller d'Etat Actuel, sous-chef de la division d'exploitation de l'Administration des chemins de fer,

Monsieur Lipine, Son Conseiller d'Etat Actuel et Ingénieur,

Monsieur Miller, Son Conseiller d'Etat et Ingénieur,

Monsieur Dernoff, Son Colonel d'Etat-Major,

Monsieur von Nottbeck, Son Colonel d'Etat-Major,

Monsieur Prang, Son Conseiller de Collège et Chef de Section,

Monsieur Kroupensky, Son Conseiller d'Etat, premier secrétaire de l'Ambassade Impériale de Russie à Berlin,

lesquels, après s'être communiqué leurs pleins-pouvoirs, trouvés en bonne et due forme, et sous la réserve de la ratification ultérieure, sont convenus des articles suivants:

Allerhöchstihren Geheimen Ober-Regierungsrat Krönig,

Allerhöchstihren Geheimen Ober-Finanzrat Joeden,

Allerhöchstihren Geheimen Ober-Baurat Nitschmann,

Allerhöchstihren Geheimen Ober-Finanzrat Ottendorff,

Allerhöchstihren Geheimen Regierungsrat Kindermann,

Allerhöchstihren Legationsrat Goetsch,

und

Seine Majestät der Kaiser von Russland:

Allerhöchstihren Wirkl. Staatsrat, Vizedirektor der Handelsbetriebssektion bei der Verwaltung der Eisenbahnen, Schabounévitch,

Allerhöchstihren Wirkl. Staatsrat und Ingenieur Lipine,

Allerhöchstihren Staatsrat und Ingenieur Miller,

Allerhöchstihren Generalstabsoberst Dernoff,

Allerhöchstihren Generalstabsoberst von Nottbeck,

Allerhöchstihren Kollegienrat und Sektionschef Prang,

Allerhöchstihren Staatsrat und Ersten Sekretär bei der Kaiserlich Russischen Botschaft in Berlin Kroupensky,

welche nach geschehener Mitteilung und gegenseitiger Anerkennung ihrer Vollmachten unter dem Vorbehalte der Ratifikation über folgende Punkte übereingekommen sind.

Article 1.

En vertu d'une concession accordée par le Gouvernement Impérial Russe, la Compagnie d'actionnaires de la ligne de Herby-Czenstochow, domiciliée en Russie, exploite, sur territoire russe, une ligne à voie étroite lui appartenant, entre Czenstochow et la localité russe de Herby, située près de la frontière commune aux deux Etats. Du côté prussien, le Gouvernement Royal Prussien exploite, sur son propre territoire et pour son propre compte, entre Lublinitz et la localité prussienne de Herby, située également près de la frontière commune, une ligne secondaire à voie normale, rejoignant à Lublinitz la ligne principale Breslau-Tarnowitz.

La largeur de la ligne Herby-Czenstochow est de 1,067 m (soit trois pieds six pouces anglais), celle de la voie Lublinitz-Herby est de 1,435 m.

Les Hauts Gouvernements sont convenus d'admettre une jonction entre ces deux lignes. A cet effet ils permettent le prolongement des voies de la ligne prussienne de l'Etat jusque dans la gare russe de Herby et le prolongement des voies de la ligne de Herby-Czenstochow jusque dans la gare prussienne de Herby, ainsi que l'établissement sur leur territoire de toutes les installations nécessaires pour le transbordement.

Article 2.

Les points où les deux voies coupent la frontière et le raccordement des parties de ces voies de chaque côté de la frontière seront déterminés, quant au plan et au profil, en commun, par les ingénieurs des deux pays. Chacun des deux Hauts

Artikel 1.

Auf Grund der ihr von der Kaiserlich Russischen Regierung verliehenen Konzession betreibt die in Russland geschäftsansässige Aktiengesellschaft der Herby-Czenstochauer Bahn auf russischem Gebiet eine ihr gehörige, schmalspurige Eisenbahn zwischen Czenstochau und dem nahe der preussisch-russischen Grenze gelegenen Orte Russisch-Herby. Auf der preussischen Seite der Grenze wird von der Königlich Preussischen Regierung auf ihrem Gebiete zwischen Lublinitz und dem ebenfalls unweit der Grenze gelegenen preussischen Orte Herby für eigene Rechnung im Anschluss an die Hauptbahnlinie Breslau—Tarnowitz eine vollspurige Nebeneisenbahn betrieben.

Die Spurweite der Herby—Czenstochauer Bahn beträgt 1,067 Meter (3 Fuss 6 Zoll englisches Mass), die der Strecke Lublinitz—Herby 1,435 Meter.

Die Hohen Regierungen sind übereingekommen, eine Verbindung zwischen diesen beiden Bahnen zuzulassen. Demgemäss gestatten sie die Weiterführung der Gleise der preussischen Staatseisenbahn in den russischen Bahnhof Herby und die Weiterführung der Gleise der Herby—Czenstochauer Bahn in den preussischen Bahnhof Herby sowie auch die Herstellung der sonst erforderlichen Übergangsanlagen auf ihrem Gebiete.

Artikel 2.

Die Punkte, wo die beiderseitigen Überführungsgleise die Grenze schneiden, und die Verbindung der auf beiden Seiten der Grenze liegenden Teile dieser Gleise hinsichtlich des Planums und des Längenprofils werden durch Techniker beider Länder ge-

Gouvernements se réserve le droit d'arrêter les détails du plan pour son propre territoire.

Article 3.

Les deux sections de voie, la section prussienne et la section russe et leurs dépendances, ainsi que les moyens de transport ont été construits de part et d'autre de manière à assurer l'exploitation par locomotives. Les installations pour le transbordement seront exécutées en conséquence.

Article 4.

Les travaux pour les installations de transbordement sur les territoires des deux Etats seront achevés dans le plus bref délai possible et autant que faire se pourra à la même époque et simultanément.

Article 5.

En vue de la remise des marchandises expédiées par une des stations à la station du pays voisin, les trains de marchandises de la ligne prussienne entreront par la voie prussienne plus large dans la gare russe de Herby et les trains de marchandises de la ligne Herby—Czenstochow par la voie (russe) plus étroite dans la gare prussienne de Herby. Pour ce qui concerne le trafic se dirigeant vers la Russie, les trains de voyageurs prussiens doivent entrer dans la gare russe de Herby, de même, quant au trafic dirigé vers la Prusse, les trains de voyageurs russes doivent entrer dans la gare prussienne de Herby.

Toutes les autres dispositions concernant la pratique du service, le transbordement et la remise des marchandises et l'expédition des voyageurs seront réglées, par les

meinschaftlich vereinbart werden. Die spezielle Feststellung des Bauentwurfs bleibt jeder der beiden Hohen Regierungen für ihr Gebiet vorbehalten.

Artikel 3.

Sowohl die preussische als auch die russische Eisenbahnstrecke und deren Zubehör sowie die Transportmittel sind von beiden Teilen dergestalt hergestellt worden, dass der Betrieb mit Lokomotiven gesichert ist. Dementsprechend sollen auch die Übergangsanlagen ausgeführt werden.

Artikel 4.

Die Bauarbeiten für die Übergangsanlagen auf den Gebieten beider Staaten sollen in tunlichst kurzer Frist und möglichst gleichzeitig vollendet werden.

Artikel 5.

Zum Zwecke der Übergabe der auf eine Station des Nachbarlandes abgefertigten Güter werden die Güterzüge der preussischen Staatseisenbahn auf dem breiteren (preussischen) Gleise in den russischen Bahnhof Herby, die Güterzüge der Herby—Czenstochauer Bahn auf dem schmaleren (russischen) Gleise in den preussischen Bahnhof Herby eingeführt werden. Ebenso sind für die Verkehrsrichtung nach Russland die preussischen Personenzüge in den Bahnhof Russisch-Herby, für die Richtung nach Preussen die russischen Personenzüge in den Bahnhof Preussisch-Herby einzuführen.

Alle weiteren Bestimmungen betreffs der Handhabung des Betriebs sowie der Güterübergabe und der Abfertigung des Personenverkehrs sollen zwischen den beiden Eisenbahnver-

deux administrations, dans une Convention spéciale et avec l'approbation des autorités repectives de leur pays.

A défaut d'entente sur un point quelconque, les deux administrations auront à se soumettre aux décisions des deux Hauts Gouvernements, prises en commun après un accord préalable entre eux.

Article 6.

La construction, l'entretien et la surveillance de la voie russe plus étroite sur territoire prussien et des autres installations de transbordement nécessitées sur territoire prussien seront à la charge de l'administration prussienne; la construction, l'entretien et la surveillance de la voie prussienne plus large sur territoire russe et des autres installations de transbordement nécessitées sur territoire russe seront à la charge de la Compagnie Herby—Czenstochow. Aucune indemnité ne sera payée par une administration à l'autre pour le parcours et l'usage des installations réciproques.

Article 7.

Les Hauts Gouvernements auront soin d'établir aux gares terminus les installations nécessaires pour pouvoir effectuer, dans le plus court espace de temps et aux moindres frais possibles, les transbordements de marchandises rendus nécessaires par la différence de largeur des voies.

Article 8.

Sans préjudice du droit de souveraineté et de surveillance des Hauts Gouvernements contractants sur les sections de voie situées dans leurs

waltungen unter Genehmigung der betreffenden Landesbehörden durch einen besonderen Vertrag geregelt werden.

Beim Mangel eines Einverständnisses über irgend einen Punkt haben sich die beiden Bahnverwaltungen den nach vorgängiger Verständigung gemeinschaftlich zu treffenden Entscheidungen der beiden Hohen Regierungen zu unterwerfen.

Artikel 6.

Der Bau, die Unterhaltung und die Beaufsichtigung des schmaleren (russischen) Gleises auf preussischem Gebiete sowie der sonst auf preussischem Staatsgebiet erforderlichen Übergangsanlagen liegt der preussischen Staatesisenbahnverwaltung, der Bau, die Unterhaltung und die Beaufsichtigung des breiteren (preussischen) Gleises auf russischem Gebiete sowie der sonst auf russischem Staatsgebiet erforderlichen Übergangsanlagen liegt der Verwaltung der Herby—Czenstochauer Eisenbahngesellschaft ob. Für das Befahren und die Benutzung der Anlagen der Nachbarverwaltung soll an diese keine Vergütung gezahlt werden.

Artikel 7.

Die Hohen Regierungen werden dafür sorgen, dass in den Endbahnhöfen die erforderlichen Einrichtungen getroffen werden, um mit dem möglichst geringen Zeit- und Kostenaufwande die durch den Unterschied der Spurweite bedingten Umladungen der Güterwagen bewirken zu können.

Artikel 8.

Unbeschadet des Hoheits- und Aufsichtsrechts der Hohen vertragschliessenden Regierungen über die in ihren Gebieten gelegenen Bahn-

territoires respectifs et sur l'exploitation et le service de ces sections, le service des trains d'une administration qui entrent dans la gare de l'autre administration restera soumis à la haute surveillance du Gouvernement du pays où l'administration a son docimile.

Article 9.

Les horaires pour le passage des trains dans la gare voisine, sont fixés d'un commun accord par les deux admistrations. Le tarif des personnes et des marchandises sera calculé et fixé, pour la ligne qui effectue le transport, jusqu'au point terminus de la gare de l'autre administration.

Article 10.

Les deux Hautes Parties contractantes s'engagent, de plus, à veiller à ce que

1. les adminstrations qui exploitent les lignes situées sur les deux territoires organisent un service de trains suffisant pour assurer le transbordement régulier des personnes et des marchandises et établissent des règlements, dispositions et installations conformes à l'intérêt des relations réciproques,

2. l'organisation d'une expédition directe de personnes et de marchandises entre les lignes désignées à l'article premier de la présente Convention et les lignes adjacentes, si les deux Hauts Gouvernements devaient juger que cette organisation est nécessaire dans l'intérêt des

strecken und über den darauf stattfindenden Betrieb, verbleibt in betreff der Ausübung des Fahrdienstes der in den Bahnhof der Nachbarverwaltung einfahrenden Züge das Oberaufsichtsrecht über die den Betrieb dieser Züge führende Eisenbahnverwaltung derjenigen Regierung, in deren Gebiete diese Verwaltung ihren Sitz hat.

Artikel 9.

Die Fahrpläne für die Durchführung der Züge in den Nachbarbahnhof werden im Einvernehmen beider Verwaltungen festgestellt. Die Fahr- und Frachttarife der anbringenden Bahnen werden bis zu dem Endpunkte der Überführungsgleise auf dem Bahnhofe der Nachbarverwaltung durchgerechnet.

Artikel 10.

Die beiden Hohen vertragschliessenden Teile verpflichten sich ferner, darüber zu wachen, dass

1. die betriebführenden Verwaltungen der auf beiderseitigem Staatsgebiete gelegenen Bahnstrecken einen Zugverkehr einrichten, der hinreichend ist, um den regelmässigen Übergangsverkehr von Personen und Gütern zu sichern, und dass sie den Übergangsverkehrsinteressen entsprechende Betriebsanordnungen, Verfügungen und Einrichtungen treffen;
2. der Einführung direkter Abfertigungen im Personen und Güterverkehre zwischen den im Artikel 1 gegenwärtiger Übereinkunft bezeichneten Eisenbahnen und den angrenzenden Bahnstrecken, falls dieselben im Interesse des Verkehrs von beiden Hohen Regierungen als

relations réciproques, ne rencontre aucune opposition de la part des administrations des chemins de fer intéressés.

La ligne prussienne Lublinitz—Herby fait partie des chemins de fer de l'Etat et se trouve comme telle sur la liste des lignes qui se sont soumises à l'arrangement international sur le tarif des transports de marchandises par voie ferrée. Le Gouvernement Impérial Russe aura soin de faire effectuer la présentation de la ligne Herby—Czenstochow à l'admission dans la même liste.

Article 11.

Les dispositions qui existent ou dont il y aura lieu de convenir encore pour la police et la surveillance des passeports et des étrangers dans la circulation sur voie ferrée seront appliquées aux stations de transbordement qui font l'objet de la présente Convention.

Article 12.

Les formalités de la révision douanière et de l'expédition des bagages des voyageurs, et des marchandises d'arrivée et de sortie seront convenues ultérieurement et plus en détail par les commissaires des deux administrations.

Article 13.

La règlementation du service des postes et des télégraphes est réservée à une entente spéciale entre les administrations respectives des postes et des télégraphes.

Article 14.

Dans tous les cas où les administrations du chemin de fer l'un ou de l'autre Etat ne pourront

wünschenswert befunden werden, seitens der betriebsführenden Verwaltungen der beteiligten Eisenbahnen nicht widersprochen werde.

Die preussische Strecke Lublinitz—Herby ist als Teil der preussischen Staatseisenbahnen bereits in die Liste der dem Internationalen Übereinkommen für den Eisenbahnfrachtverkehr unterworfenen Eisenbahnen aufgenommen. Die Kaiserlich Russische Staatsregierung wird dafür Sorge tragen, dass auch die Herby—Czenstochauer Eisenbahn zur Aufnahme in diese Liste angemeldet wird.

Artikel 11.

Die wegen Handhabung der Pass- und Fremdenpolizei im Eisenbahnverkehre schon bestehenden oder noch zu vereinbarenden Bestimmungen sollen auf die den Gegenstand dieser Übereinkunft bildende Eisenbahnverbindung Anwendung finden.

Artikel 12.

Die Förmlichkeiten der zollamtlichen Revision und Abfertigung des Passagiergepäcks sowie der ein- und ausgehenden Güter sollen seinerzeit durch beiderseitige Kommissare noch näher verabredet werden.

Artikel 13.

Die Regelung des Post- und Telegraphendienstes bleibt der besonderen Verständigung zwischen den beiderseitigen Post- und Telegraphenverwaltungen vorbehalten.

Artikel 14.

In allen Fällen, in denen die Eisenbahnverwaltungen des einen oder des anderen Staates über die verschiedenen

s'entendre sur les différents points prévus dans la présente Convention ou en général, sur les moyens d'assurer la continuité du service entre les deux frontières et le développement du commerce de transit, les Gouvernements interviendront d'office et se concerteront sur toutes les mesures nécessaires à prendre.

in der gegenwärtigen Übereinkunft vorgesehenen Punkte und überhaupt über die den Zusammenhang des Betriebs zwischen beiden Grenzen und über die die Entwickelung des Transithandels sichernden Mittel sich nicht sollten einigen können, werden die Regierungen von Amts wegen einschreiten und sich über alle zu ergreifenden Massregeln verständigen.

Article 15.

Le Gouvernement Royal Prussien aura entière liberté de déférer à l'Empire d'Allemagne tous les droits et devoirs résultant de cette Convention.

Artikel 15.

Der Königlich Preussischen Regierung soll es freistehen, die aus dieser Üebereinkunft für sie hervorgehenden Rechte und Pflichten auf das Deutsche Reich zu übertragen.

Article 16.

La présente Convention sera ratifiée et les ratifications en seront échangées à Berlin dans les deux mois à dater du jour de la signature ou plus tôt, si faire se peut.

Artikel 16.

Die gegenwärtige Übereinkunft soll ratifiziert und die Auswechselung der Ratifikationsurkunden zu Berlin binnen zwei Monaten, vom Tage der Unterzeichnung ab gerechnet, oder wenn tunlich, früher bewirkt werden.

En foi de quoi les plénipotentiaires ont signé la Convention et y ont apposé leurs sceaux.

Fait à Berlin, le 6 décembre 1904.

Zur Beglaubigung dessen haben die Bevollmächtigten diese Übereinkunft unterzeichnet und besiegelt.

So geschehen zu Berlin, den 6. Dezember 1904.

(L. S.) *Kirchhoff.*
(L. S.) *Kröning.*
(L. S.) *Joeden.*
(L. S.) *Nitschmann.*
(L. S.) *Ottendorff.*
(L. S.) *Kindermann.*
(L. S.) *Goetsch.*

(L. S.) *Schabounévitch.*
(L. S.) *Lipine.*
(L. S.) *Miller.*
(L. S.) *Dernoff.*
(L. S.) *Nottbeck.*
(L. S.) *Prang.*
(L. S.) *Kroupensky.*

85.

GRANDE-BRETAGNE, RUSSIE.

Arrangement pour régler la situation réciproque des sociétés anonymes et autres associations commerciales, industrielles ou financières; fait à St.-Pétersbourg, le 16/29 décembre 1904.

Publication officielle de la Russie.

Le Gouvernement Impérial de Russie et le Gouvernement de Sa Majesté Britannique ayant jugé utile de régler réciproquement dans l'Empire de Russie et dans le Royaume Uni de la Grande Bretagne et d'Irlande la situation des sociétés par actions (anonymes) et autres associations commerciales, industrielles ou financières, les Soussignés, en vertu de l'autorisation qui leur a été conférée, sont convenus de ce qui suit:

1. Les sociétés par actions (anonymes) et autres associations commerciales, industrielles ou financières domicilées dans l'un des deux pays et à condition qu'elles y aient été validement constituées conformément aux lois en vigueur, seront reconnues comme ayant l'existence légale dans l'autre pays et elles y auront notamment le droit d'ester en justice devant les tribunaux, soit pour intenter une action, soit pour s'y défendre.

2. En tout cas les dites sociétés et associations jouiront dans l'autre pays des mêmes droits qui sont ou seront accordés à des sociétés similaires de tout autre pays.

3. Il est entendu que la stipulation qui précède ne concerne point la question de savoir si une pareille société constituée dans l'un des deux pays sera admise ou non dans l'autre pays pour y exercer son commerce ou son industrie, cette admission restant toujours soumise aux prescriptions qui existent à cet égard dans ce dernier pays.

4. Il est entendu que les dispositions qui précèdent s'appliquent aussi bien aux sociétés et associations constituées antérieurement à la signature du présent arrangement qu'à celles qui le seraient ultérieurement.

Le présent arrangement entrera en vigueur à partir du jour de sa signature et ne cessera ses effets qu'un an après la dénonciation qui en serait faite de part ou d'autre.

Fait en double à St. Petersbourg, le $^{16}/_{29}$ décembre 1904.

(L. S.) (Signé) *Comte Lamsdorff.*
(L. S.) (Signé) *Charles Hardinge.*

86.

COLOMBIE, COSTA RICA.

Convention pour régler par voie d'arbitrage le litige concernant la délimitation des deux pays; signée à Paris, le 20 janvier 1886.

The Undersigned, namely, Carlos Holguin, Envoy Extraordinary and Minister Plenipotentiary of the United States of Colombia in Spain; and Léon Fernandez, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Costa Rica in Spain, France, and Great Britain, in the desire of obviating the difficulties that might arise as regards the execution of the Arbitration Convention concluded between the two Governments respectively on the 25th December 1880, and considering

1. That His Majesty the King of Spain, Don Alfonso XII, having condescended to accept the office of Umpire which the Undersigned proposed to him in the name of their respective Governments, in order to decide the territorial questions pending between both Republics, and that thereby the Convention of Arbitration of the 25th December 1880, has now a principle to be carried into execution before the Government of Spain;

2. That it will be in the interests of both Republics to hold there the Arbitration Tribunal proposed, because of the fact that in the archives of Spain are to be found the greater number of the original documents that will have to be made use of in order to prove effectually, and with full knowledge of the causes, the pending question of boundaries; and moreover because there are there a number of competent persons who have made a special study of American affairs, and whose opinion and advice will materially contribute to the true and just settlement of the case; and

3. That in the deplorable event of the premature decease of His Majesty Don Alfonso XII doubts would arise as to the competency of his successor to carry on the arbitration proceedings to a definite conclusion; have agreed to conclude the following Convention, ad referendum, additional to that signed at San José on the 25th December 1880, by the Plenipotentiaries of Colombia and Costa Rica, for the settlement of the question of the boundary between the two Republics:

Art. I. The United States of Colombia and the Republic of Costa Rica agree and declare that notwithstanding the decease of His Majesty Don Alfonso XII, the Government of Spain is competent to continue the arbitration proposed by the two Republics, and to pronounce, irrevocably and without appeal, a definitive judgment in the dispute respecting the territorial limits pending between the two Contracting Parties.

II. The territorial limit claimed by the United States of Colombia extends, on the Atlantic side, as far as Cape de Gracias à Dios inclusive; and, on the Pacific side, as for as th mouth of the River Golfito in Dulce Gulf. The territorial limit claimed by the Republic of Costa Rica on the Atlantic side extends up to the Island of the Escudo de Veragua and the River Chiriqui (Calobebora) inclusive; and, on the Pacific side, as far as the River Chiriqui-Viejo inclusive, to the east of Punta Burica.

III. The case for arbitration shall be restricted to the disputed territory contained within the extreme limits here described, and shall not in any manner affect the rights of a third party who, having taken no part in the arbitration, may lay claim to the ownership of territory included within the indicated limits.

IV. If from any cause the Umpire shall be unable to deliver his award within the period stipulated in Article II of the Arbitration Convention of the 25th December 1880, the High Contracting Parties may agree to extend the said period for a further ten months to be reckoned from the date of the expiration of the first term.

V. Except for the foregoing additions and modifications the Arbitration Convention of the 25th December 1880, shall, in all its parts, remain in force.

In faith of which we have signed this in duplicate and sealed it with our respective seals, at Paris, on the 20th January 1886.

(L. S.) *Carlos Holguin,*
(L. S.) *Léon Fernandez.*

87.

GRANDE-BRETAGNE, ETATS-UNIS.

Sentence arbitrale pour mettre fin aux litiges relatifs aux pêcheries dans la mer de Behring; rendue à Victoria, le 17 décembre 1897.

Whereas by a Convention between Great Britain and the United States of America, signed at Washington on the 8th February, 1896,*) it was, among other matters, agreed and concluded that „all claims on account of injuries sustained by persons in whose behalf Great Britain is entitled to claim compensation from the United States, and arising by virtue of“ a certain Treaty between Great Britain and the United States, signed at Washington on the 29th February, 1892, the Award and Fintings of

*) V. N. R. G. 2e s. XXI. 293.

the Tribunal of Arbitration constitued thereunder, as also certain additional claims specified in the preamble of the Convention first above mentioned, should be referred to two Commissioners, one of whom should be appointed by Her Britannic Majesty and the other by the President of the United States, and each of whom should be learned in the law; and it was further agreed and concluded in the Convention first herein named that said Commissioners should determine the liability of the United States, if any, in respect of each claim, and assess the amount of compensation, if any, to be paid on account thereof;

And whereas Her Britannic Majesty appointed the Honourable George Edwin King, a Justice of the Supreme Court of Canada, one of said Commissioners, and the President of the United States of America appointed the Honourable William L. Putnam, a Judge of the Circuit Court of the United States for the First Circuit, the other of said Commissioners; and we, the said Commissioners, having met at Victoria, in the Province of British Columbia, Canada, on the 23rd day of November, A.D. 1896, and our respective powers having been found to be duly authenticated, and each of us having duly taken the oath prescribed by the Convention, proceeded jointly to the discharge of our duties thereunder; and, having heard and examined on oath or affirmation every question of fact not found by the Tribunal of Arbitration under the Treaty between Her Britannic Majesty and the United States of America signed at Washington on the 29th February, 1892, and having received all suitable authentic testimony concerning the same, and being attended by counsel on behalf of Great Britain, and by counsel on behalf of the United States of America, who were duly heard before us, and having impartially and carefully examined the question submitted to us;

Now, therefore, we, the said Commissioners, do hereby determine, adjudge, and award as follows:

The rate of interests awarded by us is 6 per cent. per annum, being the statutory rate at Victoria, British Columbia, during the period covered, but being less than the current rate thereat.

As to the claim in respect of the vessel Carolena, it is determined that the United States are liable to Great Britain in respect thereof, and we assess the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows: 13,341 dol. 72 c., with interest from the 10th September, 1886, until this day, amounting to 9,020 dol. 71 c., and making a total of principal and interest of 22,362 dol. 43 c.

As to the claim in respect to the vessel Thornton, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 13,521 dol. 10 c., with interest from the 10th September, 1886, until this day, amounting to 9,142 dol. 53 c., and making a total of principal and interest of 22,663 dol. 63 c.

As to the claim in respect of the vessel Onward, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel (exclusive of the net interest of Alexander McLean who at the time of the Convention was a citizen of the United States and domiciled therein, and has so remained), as follows, that is to say: 9,376 dollars, with interest from the 10th September, 1886, until this day, amounting to 6,339 dol. 74 c., and making a total of principal and interest of the sum of 15,715 doll. 74 c.

As to the claim in respect of the vessel Favourite, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel (exclusive of the net interest of said Alexander McLean), as follows, that is to say: 3,202 dollars, with interest from the 10th September, 1886, until this day, amounting to 2,165 dol. 8 c., and making a total of principal and interest the sum of 5,367 dol. 8 c.

As to the claim in respect of the vessel W. P. Sayward, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 12,537 dol. 50 c., with interest from the 10th September, 1887, until this day, amounting to 7,725 dol. 22 c., and making a total of principal and interest of the sum of 20,262 dol. 72 c.

As to the claim in respect of the vessel Anna Beck, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 21,692 dol. 50 c., with interest from the 10th September, 1887, until this day, amounting to 13,366 dol. 19 c., making a total of principal and interest of the sum of 35,058 dol. 69 c.

As tho claim in respect of the vessel Alfred Adams, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel (exclusive of the net interest of Alexander Frank, who at the time of the Convention was a citizen of the United States, and domiciled therein, and has so remained), as follows, that is to say: 10,124 dollars, with interest from the 10th September 1887, until this day, amounting to 6,238 dol. 7 c., and making a total of principal and interest of the sum of 16,362 dol. 7 c.

As to the claim in respect of the vessel Grace, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 26,213 dol. 50 c., with interest from the 10th September 1887, until this day, amounting to 16,125 dol. 67 c., and making a total of principal and interest of 42,339 dol. 17 c.

As to the claim in respect of the vessel Dolphin, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 31,484 dollars, with interest from the 10th September 1887, until this day, amounting to the sum of 19,399 dol. 38 c., and making a total of principal and interest of the sum of 50,883 dol. 38 c.

As tho the claim in respect of the vessel Ada it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 20,902 dol. 69 c., with interest from the 10th September 1887, until this day, amounting to 12,880 dol. 1 c., and making a total of principal and interest of the sum of 33,782 dol. 70 c.

As to the claim in respect of the vessel Triumph, warned or seized the 4th August 1887, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel as follows, that is to say: 1,750 dollars, with interest from the 10th September 1887, until this day: amounting to 1,078 dol. 29 c. and making a total of principal and interest of the sum of 2,828 dol. 29 c.

As to the claim in respect of the vessel Juanita, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 11,493 dollars, with interest from the 10th September 1889, until this day, amounting to 5,702 dol. 44 c., and making a total of principal and interest of the sum of 17,195 dol. 44 c.

As to the claim in respect of the vessel Pathfinder, seized or warned the 29th July 1889, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel,

as follows, that is to say: 13,796 dollars, with interest from the 10th September 1889, until this day, amounting to 6,845 dol. 12 c., and making, a total of principal and interest of the sum of 20,641 dol. 12 c.

As to the claim in respect of the vessel Triumph, seized or warned the 11th Juli 1889, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation, to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 15,450 dollars, with interest from the 10th September 1889, until this day, amounting to 7,665 dol. 77 c., and making a total of principal and interest of the sum of 23,115 dol. 77 c.

As to the claim in respect of the vessel Black Diamond, seized or warned the 11th July 1889, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 15,173 dollars, with interest from the 10th September 1889, until this day, amounting to 7,528 dol. 32 c., and making a total of principal and interest of the sum of 22,701 dol. 32 c.

As to the claim in respect of the vessel Lily, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 11,739 dollars, with interest from the 10th September 1889, until this day, amounting to 5,832 dol. 48 c., and making a total of principal and interest of the sum of 17,571 dol. 48 c.

As to the claim in respect of the vessel Ariel, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is tho say: 4,950 dollars, with interest from the 10th September 1889, until this day, amounting to 2,456 dol. 3 c., and making a total of principal and interest of the sum of 7,406 dol. 3 c.

As to the claim in respect of the vessel Kate, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 3,050 dollars, with interest from the 10th September 1889, until this day, amounting to 1,513 dol. 31 c., and making a total of principal and interest of the sum of 4,563 dol. 31 c.

As to the claim in respect of the vessel Minnie, it is adjudged and determined that the United States of America are liable to Great Britain

in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 8,460 dollars, with interest from the 10th September 1889, until this day, amounting to 4,197 dol. 57 c., and making a total of principal and interest of the sum of 12,657 dol. 57 c.

As to the claim in respect of the vessel Pathfinder, seized the 27th March, 1890, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 800 dollars, with interest from the 27th March, 1890, until this day, amounting to 370 dol. 67 c., and making a total of principal and interest of the sum of 1,170 dol. 67 c.

As to the claim in respect of the vessel Wanderer, it is adjudged and determined that there is no liability on the part of the United States of America in respect of such claim.

As to the claim in respect of the vessel Winnifred, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners thereof, as follows, that is to say: 3,283 dol. 5 c., with interest from the 27th July, 1892, until this day, amounting to 1,061 dol. 52 c., and making a total of principal and interest of the sum of 4,344 dol. 57 c.

As to the claim in respect of the vessel Henrietta, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners, master, officers, and crew of the vessel, as follows, that is to say: 9,599 dol. 85 c., with interest on 2,437 dollars from the 2nd September, 1892, until this day, and upon the balance from the 17th February, 1894, until this day, making the entire interest 2,421 dol. 19 c., making a total of principal and interest of the sum of 12,021 dol. 4 c.

As to the claim in respect of the vessel Oscar and Hattie, it is adjudged and determined that the United States of America are liable to Great Britain in respect thereof, and we assess and award the amount of compensation to be paid on account thereof to Great Britain, on behalf of the owners thereof, as follows, that is to say: 2,250 dollars, with interest from the 30th August, 1892, until this day, amounting to 715 dol. 5 c., and making a total of principal and interest of the sum of 2,965 dol. 5 c.

As to the personal claims, we adjudge and determine that the United States of America are liable on account of the following persons, and assess and award the amount of compensation to be paid to Great Britain on account of each of them, as follows:

Daniel Munroe, master of the Onward, the principal sum of 3,000 dollars, with interest from the 10th September, 1886, to this day, making a total amount of 5,028 dol. 50 c.

John Margotich, mate of the Onward, the principal sum of 2,500 dollars, with interest from the 10th September 1886, to this day, making a total amount of 4,190 dol. 42 c.

Hans Guttormsen, master of the Thornton, the principal sum of 3,000 dollars, with interest from the 10th September 1886, to this day, making a total amount of 5,028 dol. 50 c.

Harry Norman, mate of the Thornton, the principal sum of 2,500 dollars, with interest from the 10th September 1886, to this day, making a total amount of 4,190 dol. 42 c.

James Ogilvie, master of the Carolena, the principal sum of 3,000 dollars, with interest from the 10th September 1886, to this day, making a total amount of 5,028 dol. 50 c.

James Blake, mate of the Carolena, the principal sum of 2,500 dollars, with interest from the 10th September 1886, to this day, making a total amount of 4,190 dol. 42 c.

James D. Warren, master of the Dolphin, the principal sum of 2.000 dollars, with interest from the 10th September 1887, to this day, making a total amount of 3,232 dol. 33 c.

John Reilly, mate of the Dolphin, the principal sum of 1,500 dollars, with interest from the 10th September 1887, to this day, making a total amount of 2,424 dol. 25 c.

George P. Ferey, master of the W. P. Sayward, the principal sum of 2,000 dollars, with interest from the 10th September 1887, to this day, making a total amount of 3,232 dol. 33 c.

A. B. Laing, mate of the W. P. Sayward, the principal sum of 1,500 dollars, with interest from the 10th September 1887, to this day, making a total amount of 2,424 dol. 25 c.

Louis Olsen, master of the Anna Beck, the principal sum of 2,000 dollars, with interest from the 10th September 1887, to this day, making a total amount of 3,232 dol. 33 c.

Michael Keefe, mate of the Anna Beck, the principal sum of 1,500 dollars, with interest from the 10th September 1887, to this day, making a total amount of 2,424 dol. 25 c.

W. Petit, master of the Grace, the principal sum of 2,000 dollars, with interest from the 10th September 1887, to this day, making a total amount of 3,232 dol. 33 c.

C. A. Lundberg, mate of the Ada, the principal sum of 1,000 dollars with interest from the 10th September, 1887, to this day, making a total amount of 1,616 dol. 17 c.

As to „costs in Sayward case“ it is adjudged and determined that there is no liability on the part of the United States of America in respect of such claim.

Her Majesty also presented for our consideration the following claims, that is to say:

In behalf of the Black Diamond, warned by the Collector at Unalaska on the 1st July, 1886, and also in behalf of James Gaudin, master of the Ada, as to each of which we determine and award that whe have no jurisdiction, and we dismiss the same.

Made in duplicate, and signed by us this 17th day of December, A.D. 1897.

George E. King,
Commissioner appointed by Her Britannic Majesty.
William L. Putnam,
Commissioner appointed by the President of the United States.

Respecting the claims mentioned in the Award of the Commissioners as having been presented on behalf of Great Britain, and dismissed as not being within our jurisdiction, namely, the claim of the Black Diamond, arising in the year 1886, and the present claim of James Gaudin, the Commissioners, in pursuance of the communication to them from Her Britannic Majesty's Ambassador at Washington, and the Secretary of State for the United States, dated at Washington, the 26th January, 1897, and appearing in the Protocol of the 2nd February, 1897, beg to report as follows:

We find that damage was sustained by the owners, master, officers, and crew of the Black Diamond, in connection with the notice given by the Collector of Customs at Unalaska on the 1st July, 1886, to the amount of 5,000 dollars, with interest at the rate of 6 per cent. per annum from the 10th September, 1887.

And as to the personal claim of James Gaudin, master of the Ada, in 1887, we report that the amount of damage sustained by him was 1,000 dollars, with interest at the rate of 6 per cent. per annum from the 10th September, 1887.

December 17, 1897.

George E. King,
Commissioner appointed by Her Britannic Majesty.
William L. Putnam,
Commissioner appointed by the President of the United States.

88.

ITALIE, ARGENTINE.

Traité d'arbitrage permanent; signé à Rome, le 23 juillet 1898.

La Justice internationale. Août 1903.

Art. 1. Les Hautes Parties contractantes se sont obligées à soumettre à un jugement arbitral tous les litiges, quelles qu'en soient la nature et la cause, qui viendraient à surgir entre les dites parties, si l'on n'a pu les vider amiablement par voie diplomatique directe. La cause d'arbitrage s'étend même aux litiges qui peuvent avoir une origine antérieure à la stipulation du dit traité.

Art. 2. Le cas échéant, les parties stipuleront une convention spéciale pour déterminer l'objet du litige, la portée des pouvoirs des arbitres et toute autre modalité relative à la procédure.

A défaut d'une telle convention, le tribunal, sur les déductions des parties, déterminera les points de droit et de fait qui doivent être résolus pour vider le litige.

A défaut de convention, ou si elle n'a pas prévu le point en question, on observera les règles suivantes:

Art. 3. Le tribunal sera composé de trois juges. Chacun des Etats en désignera un. Les deux arbitres choisiront un troisième arbitre. S'ils ne se mettent pas d'accord sur ce choix, le tiers arbitre sera choisi par le chef d'un Etat tiers qui en sera requis. Si ces parties ne sont pas d'accord sur le chef d'Etat à choisir, la demande de nomination en sera faite alternativement au président de la Confédération Suisse et au roi de Suède et de Norvège.

Le tiers arbitre, élu dans ces circonstances, sera président de droit du Tribunal.

Il est défendu de nommer tiers arbitre plusieurs fois de suite la même personne.

Les arbitres ne peuvent être ni citoyens des Etats contractants ni domiciliés, ni résidents dans leurs territoires. Ils doivent n'avoir aucun intérêt dans les questions qui font l'objet de l'arbitrage.

Art. 4. Si un arbitre, pour une raison quelconque, ne peut remplir ou continuer l'office d'arbitre auquel il avait été nommé, on le remplacera suivant la même procédure adoptée pour sa nomination.

Art. 5. A défaut d'un accord spécial entre les parties, le tribunal désignera l'époque et le lieu des séances loin des territoires des Etats contractants et choisira la langue dont on devra faire usage; il déterminera les moyens de procédure, les formes et les délais à fixer aux parties, les

procédures à suivre, et en général, il prendra toutes les mesures qu'il jugera nécessaires à son action et propres à résoudre toutes les difficultés de procédure qui pourraient surgir dans le cours du débat.

Les parties, de leur côté, s'engagent à mettre à la disposition des arbitres tous les moyens d'informations qui dépendent d'elles.

Art. 6. Un mandataire de chacune des parties assistera aux séances, et il représentera son gouvernement dans toutes les affaires qui se rapporteront à l'arbitrage.

Art. 7. Le tribunal est compétent pour statuer sur la régularité de sa constitution, sur la validité du compromis et sur son interprétation.

Art. 8. Le tribunal devra prononcer d'après les principes du droit international, à moins que le compromis n'impose l'application de règles spéciales et n'autorise les arbitres à statuer comme amiables compositeurs.

Art. 9. Sauf le cas de dispositions contraires, toutes les délibérations du tribunal seront valables quand elles auront la majorité des voix des arbitres.

Art. 10. La sentence devra décider définitivement tout point du litige. Elle sera rédigée en deux exemplaires et signée par tous les arbitres. Si l'un des arbitres s'y refuse, on donnera acte de refus dans la sentence qui aura effet, si elle porte la signature de la majorité absolue des arbitres. Il est défendu de joindre à la sentence des motifs contraires. La sentence devra être notifiée à chacune des parties par son représentant auprès du tribunal.

Art. 11. Chacune des parties supportera ses propres frais et la moitié des frais du tribunal arbitral.

Art. 12. La sentence, légalement prononcée, tranche dans les limites de sa portée la contestation entre les parties. Elle devra contenir l'indication du terme dans lequel elle doit être exécutée.

Le tribunal a le pouvoir de vider les questions qui pourraient surgir sur l'exécution de l'arrêt.

Art. 13. Le jugement n'est pas susceptible d'appel et il est confié à l'honneur des nations signataires du pacte.

Est reconnu le droit d'en demander, avant que la sentence ne soit exécutée, la révision devant le même tribunal qui a prononcé le jugement: 1° si on a jugé sur un document faux ou erroné; 2° si la sentence, en tout ou en partie, a été l'effet d'une erreur de fait, positif ou négatif, résultant des actes ou des documents du procès.

Art. 14. Le traité est conclu pour la durée de dix ans à partir de l'échange des ratifications. Si le traité n'est pas dénoncé six mois avant la date de l'échéance, il est entendu qu'il est renouvelé pour une nouvelle période de dix ans, et ainsi de suite.

89.

CHILI, RÉPUBLIQUE ARGENTINE.

Arrangement de délimitation; signé à Santiago, le 15/22 septembre 1898.

The Envoy Extraordinary and Minister Plenipotentiary of the Argentine Republic, Señor Norberto Piñero, and the Minister for Foreign Affairs of Chile, Señor Juan José Latorre, having met in the Ministry of Foreign Affairs of Chile, duly authorized, for the purpose of considering the acts and preliminaries relative to the general line of frontier drawn up by the experts, and to insure the faithful execution of the international Treaties and Agreements in force, the Minister for Foreign Affairs declared:

That the Government of Chile approves and maintains in all its parts the general line of frontier set forth by its expert in the Acts signed with the Argentine expert on the 29th August, 1st September, and 3rd September of the present year. The Minister Plenipotentiary declared in his turn that his Government also approves and maintains in all its parts the general line of frontier set forth by its expert in the acts quoted. With the object of facilitating the examination and determination of all the points embraced by the frontier question, the Ministers agreed to treat separately each one of its parts, viz.:

a) That relative to the line in the region comprised between the parallels 23° and 26° 52′ 45″ of south latitude.

b) That relative to the line from the parallel 26° 52′ 45″ to the neighbourhood of the parallel 52°.

c) That relative to the line in the region in the vicinity of the 52nd parallel to which the last clause of Article 2 of the Protocol of 1893 refers.

In each case they are to begin by reading the Acts of the experts.

With this the Conference terminated, two copies of equal tenour with the present Act being signed on the 15th September, 1898.

N. Piñero.
J. J. Latorre.

The Envoy Extraordinary and Minister Plenipotentiary of the Argentine Republic, Señor Norberto Piñero, and the Minister for Foreign Affairs of Chile, Señor Juan José Latorre, having met in the Ministry of Foreign Affairs of Chile, the Acts having been read of the experts of the Argentine Republic and of Chile of the 1st and 3rd of the present month relative to the frontier between both countries in the region comprised between

the parallels 23⁰ and 26⁰ 52′ 45″, to which Article I of the Agreement of the 17th April 1896, refers, the lines proposed by those officials having been examined, and its not having been found possible to arrive at any common conclusion, it was agreed to suspend the consideration of the question.

In confirmation of the above, the present Act is signed in duplicate, the 17th September 1898.

N. Piñero.
J. J. Latorre.

The Envoy Extraordinary and Minister Plenipotentiary of the Argentine Republic, Señor Norberto Piñero, and the Minister for Foreign Affairs of Chile, Señor Juan José Latorre, having met in the Ministry of Foreign Affairs of Chile, the Act having been read of the experts dated the 1st of the current month of September relative to the line which should separate the Argentine Republic from the Republic of Chile in the region in the vicinity of the 52nd parallel of south latitude, and in view of the divergences of the same experts which appear in the said Act, as much with regard to whether the cordillera of the Andes runs totally or partially into the channels of the Pacific as with regard to the dividing-line which should be adopted to leave to Chile the shores of those channels, and no direct arrangement having been found possible, the Argentine Minister Plenipotentiary and the Minister for Foreign Affairs of Chile, in the name of their respective Governments, agreed to remit to that of Her Britannic Majesty, in the form determined by another Act of this date, a copy of the present Act and of that of the experts before mentioned, in order that, in conformity with the third Article of the Agreement of 17th April 1896, it shall decide the said divergences and determine the dividing-line in the region named, after the study of the ground by the Commission which it shall designate for that purpose.

In confirmation of which two copies of equal tenour with the present Act are signed in Santiago on the 22nd September 1898.

N. Piñero.
J. J. Latorre.

The Envoy Extraordinary and Minister Penipotentiary of the Argentine Republic, Señor Norberto Piñero, and the Minister for Foreign Affairs of Chile, Señor Juan José Latorre, having met in the Ministry of Foreign Affairs of Chile, the Acts having been read of the experts of the Argentine Republic and of Chile of the 29th August and 8th September, in which the said officials have laid down the line which, in the opinion of each one of them, should separate the Argentine Republic from that of Chile, from the parallel 26⁰ 52′ 45″ of south latitude to the region in the vicinity of the 52nd parallel, the following was proved:

1. That the line of the Chilean expert starts from the pass of San Francisco, and that of the Argentine expert from Pirca de Indios.

2. That the lines of both experts coincide from the Cerro de Tres Cruces (south peak) to the Cerro de Perihuaico in the points and distances designated by the Nos. 10 to 256 in the list of the Chilean expert and 3 to 266 in the list of the Argentine expert; and, further, in the points and distances Nos. 263 to 270 in the Chilean list and 275 to 281 in the Argentine list; and, lastly, in those shown by Nos. 331 and 332 by the first, and 304 and 305 by the second.

3. That the line of the Chilean expert differs from that of the Argentine expert in the points and distances designated by the first by the Nos. 1 to 9 and 1 and 2 by the second; in the points and distances Nos. 257 to 262 of the first and 267 to 274 of the second; in the points and distances Nos. 271 to 330 of the first and 282 to 303 of the second; and the points and distances Nos. 333 to 348 of the first and No. 306 and further points without numbers which follow in the list of the second, the fact being confirmed that these last points and distances in the list of the one and the other expert are the same as those dealt with by the Act of the 1st September relative to the frontier in the region in the vicinity of the 52nd parallel.

The Minister Plenipotentiary of the Argentine Republic stated that, in the communication in which the Argentine expert had placed before him the preliminary data relative to the general line of frontier, he affirmed that the points and distances designated by the Chilean expert by the Nos. 1 to 9 inclusive, 278 to 330 inclusive and 333 to 348, also inclusive, are not situated in cordillera of the Andes as laid down by the Treaties and in the form which they establish. For this he invites the Government of Chile to reconsider them after a fresh examination.

The Minister of Foreign Affairs of Chile replied that the Chilean expert had communicated to his Government that the points and distances to which the Argentine Minister had just referred were situated in the cordillera of the Andes as laid down by the Treaties and in the form which they establish. For this he desired that the Argentine Minister would not insist in demanding a fresh examination of those points and distances, and that they might be taken into consideration as the other divergences.

In view of the foregoing contradictory declarations, which set up a question which only the Arbitrator can solve, and not having been possible to arrive at any direct arrangement, the Minister of Foreign Affairs of Chile and the Envoy Extraordinary and Minister Plenipotentiary of the Argentine Republic agreed, in the name of their respective Governments, to remit to that of Her Britannic Majesty a copy of the present Act, of the Acts of the experts which had been read, and of the International Treaties and Agreements in force, in order that, subject to Article II of the Agreement of the 17th April 1896, it may determine the differences which have been already set forth. They agreed, finally, that the delivery of the documents mentioned to the Government of Her

Britannic Majesty should be made by the Diplomatic Representatives of the Argentine and Chilean Republics before that Government, who shall state to it that, the case foreseen in Article II of the Agreement of the 17th April 1896, having arrived, it should proceed to appoint the Commission which should carry out the previous study of the ground, and to determine the differences conjointly and in one single decision.

In confirmation of the above, two copies of equal tenour with the present Act are signed the 22nd September 1898.

N. Piñero.
J. J. Latorre.

90.

REPUBLIQUE ARGENTINE, BRÉSIL.

Traité de délimitation; signé à Rio de Janeiro, le 6 octobre 1898.*)

The President of the Republic of the United States of Brazil and the President of the Argentine Republic, being desirous of completing by means of a friendly and direct Agreement the establishment of the boundary-line between the two countries, in part definitely settled by arbitration, have resolved to conclude for this purpose a Treaty, and have named as Plenipotentiaries:

The President of the Republic of the United States of Brazil, Brigade-General Dionisio Evangelista de Castro Cerqueira, Minister of Foreign Affairs;

The President of the Argentine Republic, Señor Dr. Epifanio Portella, Envoy Extraordinary and Minister Plenipotentiary of the said Republic;

Who, having exchanged their full powers, which were found in good and due form, have agreed as follows:

Art. I. The dividing-line between Brazil and the Argentine Republic starts from the River Uruguay in front of the mouth of the River Quarahim, and follows the thalweg of that river to the mouth of the River Pepiriguassu. The left or eastern bank of the Uruguay belongs to Brazil, and the right or western bank to the Argentine Republic.

II. From the mouth of the River Pepiriguassu the line follows the channel of this river to its principal source, whence it continues by the highest ground to the principal source of the River S. Antonio, and from there along the channel of that river to its junction with the River Iguassu,

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*) Les ratifications ont été échangées à Rio de Janeiro, le 26 mai 1900.

in accordance with the Award given by the President of the United States of America. The territory to the west of the dividing-line, to the full length of each of the two rivers, and of the line which divides the highest ground between the sources of the said rivers, belongs to Brazil. The land lying to the east belongs to the Argentine Republic.

III. From the mouth of the River S. Antonio the line follows the thalweg of the River Iguassu until it flows into the River Parana, the northern or right bank of the said Iguassu belonging to Brazil, and the southern or left bank to the Argentine Republic.

IV. The islands of the Uruguay and Iguassu shall belong to the country indicated by the thalweg of each of these rivers. The Boundary Commissioners. however, shall have the power to propose such exchange as they may consider advisable in the interests of both countries, which exchange shall depend on the approval of the respective Governments.

V. Each of the High Contracting Parties, after exchange of ratifications of this Treaty, shall appoint a Boundary Commission composed of one First Commissioner, of one substitute Second Commissioner, and of two assistants, with the auxiliary personnel which shall be considered necessary, and shall give it an escort of twenty soldiers commanded by a junior officer.

VI. The two Commissions, resolved into a Mixed Commission, shall, within six months from the exchange of ratifications, delimitate the part of the frontier not yet delimitated, making detailed plans of the Rivers Uruguay and Iguassu, and placing marks where ordered in their instructions. In the general plan of the frontier which they must make they shall include the part comprised between those two rivers, making use, for the purpose, of the plan made in 1887 and 1888 by the respective Mixed Commissions, and of the studies made by the Commission organized in accordance with the Protocol of the 9th August 1895.

VII. The two Governments shall draw up, by mutual consent, the necessary instructions.

VIII. The present Treaty, after approval by the Congresses of the two Republics, shall be ratified, and the ratifications exchanged in the city of Rio de Janeiro in the shortest time possible.

In faith of which the respective Plenipotentiaries sign the said Treaty, and append their seals thereto.

Done in the city of Rio de Janeiro, on the 6th October 1898.

(L. S.) *Dionisio Evangelista de Castro Cerqueira.*

(L. S.) *Epifanio Portella.*

91.

GRANDE-BRETAGNE, ALLEMAGNE.

Protocole contenant les décisions de la Commission chargée de tracer la limite entre les possessions respectives sur le lac de Nyassa-Tanganyika; du 11 novembre 1898.

State Papers. Vol. XCII.

The Undersigned having been appointed Commissioners to delimit the frontier between British and German territory from Lake Nyasa to Lake Tanganyika, as laid down in the Agreement of the 1st July 1890, have accordingly surveyed the zone of the boundary, and have come to the following agreement:

1. Since by the Agreement of the 1st July 1890, the boundary largely depends on the position of two meridians, we decided to carry out a triangulation along the boundary; the triangulation is based on the position of a point on the south shore of Kambwe Lagoon; we agree that the geographical positions of this point is latitude 9° 53′ 57″, longitude 33° 56′ 5″.

2. For the purpose of discussing boundary matters, we further agree upon the geographical positions of the points in the following list. These points are either on the boundary, or very near it:

Place.	Values agreed upon.						Remarks.
	Latitude.			Longitude.			
	°	′	″	°	′	″	
South bank of the mouth of the Songwe River	9	42	53	33	56	12	A trigonometrical point about 50 yards south of the bank.
Intersection of meridian of 33° east with the Katendo River	9	22	4	33	0	0	The mean position of two boundary pillars, one on each side of the Katendo.
Boundary pillar north of Fife	9	17	21	32	38	53	A pole surrounded by a heap of stones.
Intersection of meridian of 32° east with the watershed of the Congo basin	9	4	31	32	0	0	Marked by a brick pillar west of Mambwé.
East end of Saisi Bridge	8	55	46	31	43	56	Trigonometrical point where the Stevenson road crosses the Saisi River.
Junction of the Rivers Kalambo and Safu	8	35	32	31	21	42	
Sandspit at the mouth of the Kalambo River	.	.	. .	.	.	. .	To be agreed upon.

3. We agree that the boundary shall run as follows:

Starting from the mouth of the River Songwe at Lake Nyasa, it ascends that river until its junction with the Katendo stream in the Chitete district; it then follows the Katendo stream until its intersection with the meridian to 33° east; at this point two pillars have been built, one on each side of the Katendo.

From this point the boundary goes in a straight line at an azimuth of 50° to the top of Ngungulu (Nkungulu) Hill, which is on the watershed of the Congo Basin.

From this hill the boundary goes along the watershed to a boundary-pillar 4 miles ($6^1/_2$ kilom.) to the west, and thence to a pillar at the source, of the Mpemba stream.

Here the boundary leaves the watershed and follows the Mpemba stream to a point 130 yards to the north of Tontera village, where a boundary-post has been erected on the left bank of the stream.

From this point the boundary goes in a straight line due west for 2,800 yards (2,560 metres), where there is a boundary - pillar on the watershed.

The boundary then goes along the watershed passing the following pillars:

1. A pillar on the Kumbi Hill.
2. A post about 1 mile 75 yards (3 kilom.) north of Five.
3. A post about 400 yards south of the source of the Makimbo stream.
4. A post about midway between the old and new Stevenson road.
5. A post 1 mile east of Normbwe village.
6. A post 1 mile (1·7 kilom.) south-east of Chisitu village.

Here the boundary leaves the watershed, agd goes in a straight line to a post about 0·75 miles (1,200 metres) north-west of Ikomba, and from this point in a straight line to a post in the Zuwa Forest, about 2 miles south of the village of Karimanzirn; this post is on the watershed.

From this point the boundary runs along the watershed, passing the following boundary-posts:

1. A post 700 yards west of Chowere (Tshowere) village.
2. A post on Dondondu Hill.
3. A post about half-way between the villages of Msungo and Mambwe.

The boundary then continues along the watershed, passing through three pillars in the neighbourhood of Mambwe, which are shown on a special plan. The last of these pillars is at the intersection of the watershed with the meridian of 32° east.

The boundary then runs in a straight line to the source of the Masieti stream, and follows the stream until its junction with the Masia.

Thence in a straight line to a boundary-post south of the ruined village of Ipundu, on the left bank of the Ipundu River.

Thence in a straight line to the junction of the Rivers Saisi (Ssaissi) and Kasokolwa (Kässokorwa).

It then ascends the Saisi (Ssaissi) River until the entry of the Lumi (Rumi) River.

Thence the boundary ascends the Lumi until the entry of the Mkomba (Mkumba) stream.

Thence it ascends the Mkomba (Mkumba) stream to its source.

Thence the boundary goes in a straight line to the centre of a narrow saddle between the source of the Mozi (Mosi) and Chipoko (Tshipoko) streams, and thence in a straight line to the south-east source of the Samfn River.

Thence it follows the Samfu (Ssafu) River to its junction with the Kalambo, and thence follows the Kalambo River to its mouth in Lake Tanganyika.

4. In all cases when a river or stream forms the boundary it is said to be understood that the boundary-line is the „thalweg" of the stream; but in cases where the „thalweg" is indeterminate, the centre line of the bed is to be taken as the boundary.

If any river forming part of the boundary should change its course in the future, the „thalweg", or centre line of the old bed, as it exists on this date, shall still be the boundary-line.

5. No fresh determination of the geographical position of any natural features, or boundary-pillar mentioned in the Protocol, shall alter the boundary here laid down; the boundary shall still be defined hy the same features and pillars, notwithstanding any erroneous description of their geographical positions in the Protocols or maps of this Commission.

6. As we have as far as possible exchanged equal areas of territory on each side of the theoretical boundary, we suggest that this Agreement should be ratified as soon as possible in order that the decisions of the two Governments may be out here before the close of the next harvest at the end of September 1899.

Should the ratification arrive after this, those natives whose villages are separated from their crops by the boundary shall, in any case be allowed to gather such crops until the 31st October, 1899.

7. It is desirable that, pending the approval by the British and German Governments of the boundary-line above described, the areas of the Administrations of the British and German authorities shall be considered to be bounded by the line so described, and we will suggest to the Local Governments that they should observe this line with the exception described above concerning the crops.

8. All boundary-pillars are under the joint protection of the British and German Governments.

The British Government will arrange to protect the longitude pillars at Nkata Telegraph Camp and at Kambwe Lagoon, and the two base pillars near the mouth of the River Songwe.

9. Should it be necessary to rebuild or repair any boundary-pillar, the Local Governments concerned will each send a Representative for the purpose.

If in the future it is considered necessary to define the boundary more rigidly, one Representative from each Government concerned shall be sent to build intermediate pillars; the positions of such pillars shall be based on the boundary-line as shown on the maps of this Commission.

10. We suggest that from this date the Local Governments shall point out to the inhabitants of the boundary zone the position and meaning of the boundary-line.

11. Between this date and the date of the arrival of the ratification of the boundary-line in this country, the Local Governments will not oppose any obstacle to the movements of any natives who wish to cross the boundary from one side to settle on the other side.

Signed at Ikawa, this 11th day of November 1898.

C. F. Close,
Captain, R.E., British Commissioner.
Herrmann,
German Commissioner.

92.

ETATS-UNIS, HAÏTI.

Arrangement pour régler par voie d'arbitrage, la question des dommages-intérêts, réclamés par John D. Metzger and Co.; signé à Washington, le 18 octobre 1899.

State Papers. V. XCII.

Protocol of an Agreement between the Secretary of State of the United States and the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Hayti, for submission to an arbitration of the question of liability and amount of damages to be awarded in favour of John D. Metzger and Co., American citizens, against the Republic of Hayti.

The United States of America and the Republic of Hayti, through their Representatives, John Hay, Secretary of State of the United States of America, and J. N. Léger, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Hayti, have agreed upon and signed the following Protocol:

Whereas the said John D. Metzger and Co., citizens of the United States of America, have claimed, through the Government of the United

States, from the Government of Hayti, indemnity on account of the seizure and sale of their goods at Port-au-Prince for the non-payment of certain licence taxes; and on account of the alleged failure to furnish them an adequate supply of water for the operation of their mill at Port-au-Prince; and on account of the alleged liability of a quantity of lumber alleged to have been sold by them for a Relief Committee on the occasion of devastation by fire at Jacmel, it is agreed between the two Governments:

Art. 1. That the question of the liability of the Republic of Hayti to pay an indemnity in each of said cases, and, if so found by the Arbitrator, the further question of the amount of the said indemnity to be awarded, shall be referred to the Honourable William R. Day, sometime Secretary of State of the United States, and now Judge of the Circuit Court thereof, who is hereby appointed as Arbitrator to hear said causes, and to determine the questions of said liability and the amount of said indemnity, if any is found by the said Arbitrator to be justly due.

II. The Government of the United States will lay before the Arbitrator the claimants' evidence and all correspondence, either between the Haytien Government and the United States' Minister at Port-au-Prince, or between the Department of State and the Haytien Minister at Washington, and the despatches, with their inclosures, from the said Minister, reporting documentary or other evidence to the Department of State in relation to said claims.

Reciprocally, the Haytien Government shall have the same rights of presentation of evidence in its own behalf as are above stipulated for the Government of the United States.

Each Government will furnish to the other a duplicate of the evidence and correspondence at the same time they are by them respectively laid before the Arbitrator.

If, in the opinion of the Arbitrator, it shall be deemed desirable in the interests of justice to take further evidence, he shall communicate to both parties his opinion, and shall indicate the questions of fact on which the same shall be taken. Likewise, either Government, on notice to the other, may apply to him for that purpose. Each Government shall, in case the Arbitrator orders the taking, name an Agent to take such evidence in its own behalf, who shall each have the right to be present at the taking thereof, and to cross-examine the witnesses and take copies of documentary evidence offered by the other. All questions of procedure shall be left the determination of the Arbitrator. Each Government agrees to abide by such determination, and, in default, thereof, the said Arbitrator may proceed in such manner and at such times as he may determine, in order to close the proofs and make final award.

III. The Government of Hayti agrees to pay any amount or amounts which may be awarded by the Arbitrator if he finds that it is liable therefor.

IV. The evidence is to be submitted to the Arbitrator, and finally closed on or before the 1st day of March 1900, and his decision is to be rendered within four months thereafter.

V. Each Government shall furnish to the Arbitrator an argument or brief not later than the 1st day of April 1900, a copy of which each party shall furnish to the other at the same time as to the Arbitrator; and the claimant and the Commune of Port-au-Prince may also file briefs in the cause on the same terms; but the Arbitrator need not for such purpose delay his decision.

VI. The Government of Hayti shall pay the indemnity awarded by the Arbitrator, if any, as soon as the Legislative Assembly of Hayti shall authorize the payment; but the time thus allowed shall in no case exceed six months from the day the decision is pronounced, unless an extension of time of its payment should be granted by the Government of the United States.

VII. Reasonable compensation to the Arbitrator for all his services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the said Governments.

VIII. Any award given by the Arbitrator shall be final and conclusive.

Done in duplicate in English and in French, at Washington, this 18th day of October 1899.

(L. S.) *John Hay.*
(L. S.) *J. N. Léger.*

93.

RÉPUBLIQUE ARGENTINE, PARAGUAY.

Traité d'arbitrage; signé à Ascension, le 6 novembre 1899.*)

State Papers. V. XCII.

The Governments of the Argentine Republic and of the Republic of Paraguay, being animated by the common desire to arrange by amicable means any question which may arise between the two countries, have resolved to draw up a General Treaty of Arbitration, for which purpose they nominate as their Plenipotentiaries, namely;

His Excellency the President of the Argentine Republic, his Envoy Extraordinary and Minister Plenipotentiary to the Republic of Paraguay, Don Lauro Cabral; and

His Excellency the President of the Republic of Paraguay, his Minister for the Department of Foreign Affairs, Don José S. Decoud;

*) L'échange des ratifications a eu lieu à Ascension, le 5 juin 1902.

Who, having communicated their full powers, which were found to be in good and due form, have agreed upon the following Articles:

Art. I. The High Contracting Parties undertake to submit to decision by arbitration all controversies of whatever nature which for any cause whatsoever may arise between them, in so far as they do not affect the principles of the Constitution of either country, and provided always that they cannot be settled by means of direct negotiations.

II. Questions which may have been the object of definite agreements between the Contracting Parties cannot be reopened by virtue of this Treaty. In such cases arbitration shall be limited exclusively to the questions which may arise respecting the validity, interpretation, and fulfilment of such agreements.

III. In every case which occurs the Arbitration Tribunal shall be constituted which is to decide the controversy raised.

If there should be a disagreement respecting the constitution of the Tribunal, the latter shall be composed of three Judges. Each State shall name an Arbiter, and these shall designate the third. If they should be unable to agree upon that designation, it shall be made by a Chief of a third State who shall be indicated by the Arbiters named by the Parties. Should they be unable to agree as to this latter nomination, the President of the Swiss Confederation shall be invited to designate him. The Arbiter thus selected shall be of right President of the Tribunal.

A person cannot be named as third Arbiter who has already given a decision in that capacity in a case of arbitration in accordance with this Treaty.

IV. No one of the Arbiters shall be a citizen of the Contracting States or domiciled in their territory. Neither shall he have an interest in the questions submitted to arbitration.

V. In case of one or more of the Arbiters declining, withdrawing, or being otherwise prevented from acting, substitutes shall be found in the same manner as that adopted for their nomination.

VI. The points at issue shall be indicated by the Contracting States, who shall also be able to determine the scope of the Arbiters' powers, and any other circumstance relating to the procedure.

VII. In default of special stipulations between the Parties, it shall be incumbent on the Tribunal to fix the time and place of its sessions outside the territory of the Contracting States, to select the language to be employed, to determine the methods of proof, the formalities and terms to be prescribed to the Parties, the procedure to be followed, and in general to take all measures necessary for the exercise of its functions, and to settle all the difficulties of procedure which might arise in the course of the debate.

The litigants undertake to furnish the Arbiters with all the means of information at their disposal.

VIII. Each of the Parties shall be able to appoint one or more mandatories to represent it before the Arbitration Tribunal.

IX. The Tribunal is competent in decide upon the regularity of its own constitution, and upon the validity and interpretation of the agreement. It is equally competent to decide disputes which may arise between the litigants as to whether questions determined by it were or were not points submitted to jurisdiction by arbitration in the written agreement.

X. The Tribunal shall decide in accordance with the principles of international law, unless the agreement calls for the application of special rules, or authorizes the Arbiters to decide in the character of friendly advisers.

X. A Tribunal shall not be able to be formed without the concurrence of the three Arbiters. In case the minority, when duly cited, should not be willing to attend the deliberations or other proceedings, the Tribunal shall be formed by the majority of the Arbiters only, who shall record the voluntary and unjustified absence of the minority.

The decision of the majority of the Arbiters shall be accepted as the award; but if the third Arbiter does not accept the opinion of either of the Arbiters named by the Parties, his decision shall be final.

XII. The award shall decide definitely each point in litigation, and shall set forth the grounds on which it is based.

It shall be drawn up in duplicate and signed by all the Arbiters. If any one of them should refuse to sign it the others shall mention that circumstance in a special Protocol, and the award shall take effect whenever it is signed by the majority of the Arbiters. The dissenting Arbiter shall confine himself to recording his dissent when the award is signed without stating his reasons.

XIII. The award shall be notified to each of the Parties through the medium of its representative on the Tribunal.

XIV. The award legally pronounced decides within the limits of its scope the controversy between the Parties.

XV. The Tribunal shall determine in its award the period within which it shall be executed, being also competent to decide the questions which may arise with reference to its execution.

YVI. There is no appeal against the award, and its fulfilment is confided to the honour of the nations who have signed this compact.

Nevertheless, an appeal will be allowed for revision before the same Tribunal which pronounced it, provided it is lodged before the lapse of the period assigned for the execution, in the following cases:

1. If the award has been pronounced in consequence of a document having been falsified or tampered with;

2. If the award has been in whole or in part the consequence of an error of fact resulting from the arguments or documents of the case.

XVII. Each of the Parties shall pay its own expenses and half the general expenses of the Tribunal of Arbitration.

XVIII. The present Treaty shall remain in force ten years, dating from the exchange of ratifications. If it should not be denounced six

months before the lapse of that period, it shall be considered to be renewed for another space of ten years, and so on.

The present Treaty shall be ratified, and the ratifications shall be exchanged in Asuncion within six months of the date of the same.

In virtue of which the Plenipotentiaries of the Argentine Republic and of the Republic of Paraguay have signed the present Treaty in duplicate, and sealed it with their respective seals, in the city of Asuncion, on the 6th day of November, in the year 1899.

(L. S.) *Lauro Cabral.*
(L. S.) *José S. Decoud.*

Protocole.

Their Excellencies Dr. Manuel Dominguez, Minister for Foreign Affairs, and Don Lauro Cabral, Envoy Extraordinary and Minister Plenipotentiary of the Argentine Republic, having met in the Department for Foreign Affairs of the Republic of Paraguay, and having agreed to the proposal to modify the General Treaty of Arbitration concluded between the two Governments on the 6th November 1899, in the part dealing with the formation of the Tribunal of Arbitration, and with a view to securing its constitution without the inconveniencies inherent in a permanent Tribunal, have agreed upon the following:

Article III of the Treaty referred to stands modified as follows:

Article III. In every case which occours the Arbitration Tribunal shall be constituted which is to decide the controversy raised.

If there should be disagreement respecting the constitution of the Tribunal, the latter shall be composed of three Judges. Each State shall name an Arbiter, and these shall designate the third. If they should be unable to agree upon that designation, it shall be made by the Chief of a third State who shall be indicated by the Arbiters named by the Parties. Should they be unable to agree as to this latter nomination, each Party shall designate a different Power and the selection of the third Arbiter shall be made by the two Powers thus designated. The Arbiter thus selected shall be of right President of the Tribunal. A person cannot be named as third Arbiter who has already given a decision in that capacity in a case of arbitration in accordance with this Treaty.

The present Protocol shall be ratified and the ratifications shall be exchanged simultaneously with the Treaty of Arbitration, of which it shall form an integral part.

In virtue of which it is signed in duplicate, in the city of Asuncion, on the 25th day of January, in the year 1902.

(L. S.) *Manuel Dominguez.*
(L. S.) *Lauro Cabral.*

94.

GRANDE-BRETAGNE, ALLEMAGNE, ETATS-UNIS.

Convention destinée à régler par voie d'arbitrage les différends survenus pendant les troubles dans les îles de Samoa; signée à Washington, le 7 novembre 1899.*) **)

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland; His Majesty the German Emperor, King of Prussia, in the name of the German Empire; and the President of the United States of America, being desirous of effecting a prompt and satisfactory settlement of the claims of the subjects and citizens of their respective countries resident in the Samoan Islands on account of recent military operations conducted there, and having resolved to conclude a Convention for the accomplishment of this end by means of arbitration, have appointed as their respective Plenipotentiaries:

Ihre Majestät die Königin des Vereinigten Königreichs von Grossbritannien und Irland; Seine Majestät der deutsche Kaiser, König von Preussen, im Namen des deutschen Reiches; und der Präsident der Vereinigten Staaten von Amerika, geleitet von dem Wunsche, die durch die jüngst auf den Samoa-Inseln stattgefundenen militärischen Aktionen veranlassten Schadens - Ersatz - Ansprüche der dortselbst ansässigen Angehörigen der beteiligten Reiche und Staaten baldigst und allseitig zufrieden stellend zu erledigen, und entschlossen, ein Abkommen behufs schiedsgerichtlicher Regelung dieser Fragen abzuschliessen, haben zu ihren Bevollmächtigten ernannt:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Mr. Reginald Tower, Her Britannic Majesty's Chargé d'Affaires ad interim;

His Majesty the German Emperor, King of Prussia, his Minister in Extraordinary Mission, Dr. jur. Mumm von Schwarzenstein, Privy Councillor of Legation; and

Ihre Majestät die Königin des Vereinigten Königreichs von Grossbritannien und Irland Allerhöchstihren Geschäftsträger ad interim, Mr. Reginald Tower;

Seine Majestät der Deutsche Kaiser, König von Preussen, Allerhöchstihren Gesandten in ausserordentlicher Mission, den Geheimen Legationsrat Dr. jur. Mumm von Schwarzenstein;

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*) Les ratifications ont été échangées à Washington, le 7 mars 1900.
) V. **N. R. G. 2e s. XXX. 678.

The President of the United States of America, the Honourable John Hay, Secretary of State of the United States;

Who, after having communicated to each other their full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:

Art. I All claims put forward by British subjects or Germans, or American citizens respectively, whether individuals or Companies, for compensation on account of losses which they allege that they have suffered in consequence of unwarranted military action, if this be shown to have occurred, on the part of British, German, or American officers between the 1st January last and the arrival of the Joint Commission in Samoa, shall be decided by arbitration in conformity with the principles of international law or considerations of equity.

II. The three Governments shall request His Majesty the King of Sweden and Norway to accept the office of Arbitrator. It shall also be decided by this arbitration whether, and eventually to what extent, either of the three Governments is bound, alone or jointly with the others, to make good these losses.

III. Either of the three Governments may, with the consent of the others, previously obtained in every case, submit to the King for arbi-

Der Präsident der Vereinigten Staaten von Amerika, den Staatssekretär der Vereinigten Staaten the Honourable John Hay;

Welche, nach gegenseitiger Mitteilung ihrer in guter und gehöriger Form befundenen Vollmachten, folgende Bestimmungen vereinbart und ausgemacht haben:

Art. I. Alle Ansprüche, welche von britischen Untertanen, von deutschen oder von amerikanischen Bürgern und zwar sowohl von Einzelpersonen wie auch von Gesellschaften, wegen Ersatzes von Schäden geltend gemacht werden, welche sie infolge der ungerechtfertigten militärischen Aktion englischer, deutscher, oder amerikanischer Offiziere, sofern eine solche nachgewiesen wird, in dem Zeitabschnitt vom 1. Januar d. J. bis zu dem Tage erlitten zu haben vorgeben, an welchem die Ankunft der Kommission auf Samoa erfolgt ist, sollen durch einen nach Grundsätzen des Rechts oder nach Erwägungen der Billigkeit zu fällenden Schiedsspruch erledigt werden.

II. Seine Majestät der König von Schweden und Norwegen wird Seitens der drei Regierungen ersucht werden, das Amt des Schiedsrichters anzunehmen. Durch diesen Schiedsspruch soll ferner entschieden werden, ob die eine oder die andere der drei Regierungen, allein oder in Verbindung mit einer der anderen Regierungen, oder in Verbindung mit beiden anderen Regierungen diese Schäden zu ersetzen hat und eventuell in welchem Umfange.

III. Jeder der drei Regierungen soll es, nach dem sie in jedem Falle die vorhergehende Zustimmung der anderen Regierungen erlangt hat, ge-

tration similar claims of persons not being natives, who are under the protection of that Government, and who are not included in the above-mentioned categories.

IV. The present Convention shall be duly ratified by Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and by His Majesty the German Emperor, King of Prussia and by the President of the United States of America, by and with the Senate thereof; and the ratifications shall be exchanged at Washington four months from the date hereof, or earlier if possible.

In faith whereof we, the respective Plenipotentiaries, have signed this Convention, and have hereunto affixed our seals.

Done in triplicate at Washington, the 7th day of November 1899.

(L. S.) *A. v. Mumm.*
(L. S.) *John Hay.*
(L. S.) *Reginald Tower.*

stattet sein, dem Schiedsspruche des Königs auch ähnliche Ansprüche von solchen nicht eingeborenen Personen zu unterbreiten, welche unter dem Schutze der betreffenden Macht stehen und nicht den oben erwähnten Kategorien angehören.

IV. Das gegenwärtige Abkommen soll von Ihrer Majestät der Königin des Vereinigten Königreichs von Grossbritannien und Irland, von Seiner Majestät dem deutschen Kaiser, König von Preussen, und von dem Präsidenten der Vereinigten Staaten von America, unter Zuziehung und mit Zustimmung des Senats der Vereinigten Staaten ratifiziert werden; und die Ratifikationsurkunden sollen in vier Monaten von dem heutigen Tage an gerechnet oder wenn möglich früher in Washington ausgetauscht werden.

Zu Urkund dessen haben wir, die unterfertigten Bevollmächtigten, dieses Abkommen unterzeichnet und unsere Siegel beigedrückt.

So geschehen in dreifacher Ausfertigung zu Washington, den siebenten November, eintausend achthundert neunundneunzig

(L. S.) *A. v. Mumm.*
(L. S.) *John Hay.*
(L. S.) *Reginald Tower.*

95.

COLOMBIE, COSTA-RICA.

Sentence arbitrale rendue par le Président de la République française pour trancher la question des limites entre les deux Etats; signée à Paris, le 11 septembre 1900.

Communication officielle.

Nous, Président de la République Française,

Arbitre en vertu du Traité signé le 4 novembre, 1896 à Bogotá, par les Républiques de Colombie et de Costa-Rica, Acte qui nous a conféré pleins pouvoirs en vue d'apprécier, suivant les principes de droit et les précédents historiques, la délimitation à intervenir entre les deux États susnommés;

Ayant pris connaissance de tous les documents fournis par les parties en cause, et notamment

1. En ce qui concerne la Colombie: de l'exposé de Don François Silvela, Avocat de la Légation de Colombie en Espagne;

Des deuxième et troisième Mémoires, présentés au nom de la République de Colombie par M. Poincaré, Avocat à la Cour d'Appel de Paris;

D'une consultation de M. Maura, Député aux Cortès Espagnoles, Président de l'Académie Royale de Jurisprudence de Madrid, sur la question de limites entre la Colombie et le Costa-Rica;

D'une autre consultation de MM. le Dr. Simon de la Rosa y Lopez, Professeur de Droit Politique à l'Université de Séville, et ses Collaborateurs;

Du résumé chronologique des titres territoriaux de Colombie;

Et des nombreuses cartes géographiques et textes, tant originaux que traduits et annotés, à nous remis par le Représentant de la Colombie, spécialement accrédité auprès de nous pour litige actuel;

2. En ce qui concerne le Costa-Rica;

Des ouvrages de M. Manuel M. de Peralta, Envoyé Extraordinaire et Ministre Plénipotentiaire de cette République à Paris, intitulés;

„Limites de Costa-Rica et Colombia;“

„Costa-Rica y Costa de Mosquitos;“

„Juridiction Territoriale de Costa-Rica;“

De l'exposé des titres territoriaux de la République de Costa-Rica;

De la réplique à l'exposé de la République de Colombie;

De l'atlas historico-geografico de Costa-Rica, Veragua y Costa de Mosquitos;

Du volume de M. de Peralta: „Géographie Historique et Droits Territoriaux du Costa-Rica," &c.:

Et, en général, de tous et toutes décisions, capitulations, ordres royaux, provisions, cédules royales, lois, édictés et promulgués par l'ancienne Monarchie Espagnole, Souveraine absolue et libre dispositrice des territoires qui ont fait partie, dans la suite, des deux Républiques;

Ayant procédé à une étude minutieuse et approfondie des dits Actes, à nous soumis par les Parties, notamment; des Cédules Royales du 27 Juillet, 1513, du 6 septembre, 1521, de la Provision Royale du 21 avril, 1529, des Cédules Royales du 2 mars, 1537, des 11 janvier et 9 mai, 1541, du 21 janvier, 1557, des 23 février et 18 juillet, 1560, des 4 et 9 août, 1561, du 8 septembre, 1563, du 28 juin, 1568, du 17 juillet, 1572, de la capitulation du Pardo du 1er décembre, 1573, de la Recopilacion de las Leyes de Indias de 1680, particulièrement des Lois 4, 6, et 9 de ce recueil, des Cédules Royales des 21 juillet et 13 novembre, 1722, du 20 août, 1739, du 24 mai, 1740, du 31 octobre, 1742, du 30 novembre, 1756, des différentes instructions émanant du Souverain Espagnol et adressées taut aux autorités supérieures de la Vice-Royauté de Santa-Fé qu'à celles de la Capitainerie Générale de Guatémala au cours du dix-huitième siècle et dans les années suivantes; des Ordres Royaux de 1803 et 1805, des stipulations du Traité conclu en 1825, entre les deux Républiques Indépendantes, &c.;

Et conscient de l'importance de notre haute mission, ainsi que du très grand honneur qui nous a été fait d'être choisi comme juge dans le présent débat, n'ayant rien négligé pour nous rendre un compte exact de la valeur des titres invoqués par l'un et l'autre des deux pays,

Arrêtons;

La frontière entre les Républiques de Colombie et de Costa-Rica sera formée par le contrefort de la Cordillère, qui part du Cap Mona sur l'Océan Atlantique et ferme au nord la vallée du Rio Tarire au Rio-Sixola, puis par la chaîne de partage des eaux entre l'Atlantique et le Pacifique jusqu'à par 9 degrés environ de latitude; elle suivra ensuite la ligne de partage des eaux entre le Chérique-Viejo et les affluents du Golfe Dulce, pour aboutir à la Pointe Burica sur l'Océan Pacifique.

En ce qui concerne les îles, groupes d'îles îlots, bancs, situés dans l'Océan Atlantique, à proximité de la côte, à l'est et au sud-est de la Pointe Mona, ces îles, quels que soient leur nombre et leur étendue, feront partie du domaine de la Colombie. Celles qui sont sises à l'ouest et au nord-ouest de la dite pointe appartiendront à la République de Costa-Rica.

Quant aux îles les plus éloignées du continent et comprises entre la côte de Mosquitos et l'Isthme de Panama, nommément: Mangle-Chico, Mangle-Grande, Cayos-de-Alburquerque, San Andrès, Santa-Catalina, Providencia, Escudo de-Veragua, ainsi que toutes autres îles, îlots et bancs relevant de l'ancienne Province de Cartagena, sous la dénomination de

canton de San-Andrès, il est entendu que le territoire de ces îles, sans en excepter aucune, appartient aux États-Unis de Colombie.

Du côté de l'Océan Pacifique la Colombie possédera également, à partir des îles Burica et y compris celles-ci, toutes les îles situées à l'est de la pointe ou même nom, celles qui sont sises à l'ouest de cette pointe étant attribuée au Costa-Rica.

Emile Loubet.

96.

BRÉSIL, GRANDE-BRETAGNE.

Traité pour soumettre à un arbitrage le litige relatif à la frontière entre le Brésil et la Guyane Britannique; signé à Londres, le 6 novembre 1901.*)

Treaty series. 1902.

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India and the President of the United States of Brazil, being desirous to provide for an amicable settlement of the question which has arisen between their respective Governments concerning the boundary between the United States of Brazil and the Colony of British Guiana, have resolved to submit to arbitration the question involved, and, to the end of concluding a Treaty for that purpose, have appointed as Their respective Plenipotentiaries:

And His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, the Most Honourable Henry Charles Keith Petty Fitz-Maurice, Marquess of Lansdowne, Earl Wycombe, Viscount Caln and Calnstone and Lord Wycombe, Baron of Chipping Wycombe, Baron Nairne, Earl of Kerry and Earl of Shelburne, Viscount Clanmaurice and Fitzmaurice, Baron of Kerry, Lixnaw and Dunkerron, a Peer of the United Kingdom of Great Britain and Ireland, a Member of His Britannic Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, etc., etc., His Majesty's Principal Secretary of State for Foreign Affairs;

The President of the United States of Brazil, Senhor Joaquim Aurelio Nabuco de Araujo, Envoy Extraordinary and Minister Plenipotentiary of Brazil to His Britannic Majesty;

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*) Les ratifications ont été échangées à Rio de Janeiro, le 28 janvier 1902.

Who, having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:

Art. I. His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, and the President of the United States of Brazil, agree to invite His Majesty the King of Italy to decide as Arbitrator the question as to the above mentioned boundary.

Art. II. The territory in dispute between the United States of Brazil and the Colony of British Guiana shall be taken to be the teritory lying between the Takutu and the Cotinga and a line drawn from the source of the Cotinga eastward following the watershed to a point near Mount Ayangcanna thence in a southeasterly direction still following the general direction of the watershed as far as the hill called Annai, thence by the nearest tributary to the Rupununi, up that river to its source, and from that point crossing to the source of the Takutu.

Art. III. The Arbitrator shall be requested to investigate and ascertain the extent of the territory which, whether the whole or a part of the zone described in the preceding Article, may lawfully be claimed by either of the High Contracting Parties, and to determine the boundary-line between the United States of Brazil and the Colony British Guiana.

Art. IV. In deciding the question submitted, the Arbitrator shall ascertain all facts which he deems necessary to a decision of the controversy, and shall be governed by such principles of international law as he shall determine to be applicable to the case.

Art. V. The printed Case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to the Arbitrator and to the Government of the other Party within a period not exceeding twelve months from the date of the exchange of the ratifications of this Treaty.

Art. VI. Within six months after the Cases shall have been delivered in the manner provided in the preceding Article, either Party may in like manner deliver in duplicate to the Arbitrator and to the Government of the other Party a Counter-Case and additional documents, correspondence, and evidence in reply to the Case, documents, correspondence, and evidence as presented by the other Party.

If in the Case or Counter-Case submitted to the Arbitrator either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof, and either Party may call upon the other through the Arbitrator, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance notice thereof within forty days after the delivery of the Case or Counter-Case, and the original or copy so requested shall be delivered as soon as may be within a period not exceeding forty days after the receipt of notice.

Art. VII. Within four months after the expiration of the time fixed for the delivery of the Counter-Case on both sides, each Party shall deliver in duplicate to the Arbitrator and to the Government of the other Party a printed Argument showing the points and referring to the evidence upon which each Government relies; and the Arbitrator may, if he desires any further elucidation with regard to any point in the Argument of either Party, require a further written or printed statement or argument upon it; but in such case the other Party shall be entitled to reply by means of a similar written or printed statement or argument.

Art. VIII. The Arbitrator may, for any cause deemed by him sufficient, extend the periods fixed by Articles V, VI, and VII, or any of them by the allowance of thirty days additional.

Art. IX. The High Contracting Parties agree to request that the Decision of the Arbitrator may, if possible, be made within six months of the delivery of the Argument on both sides.

They further agree to request that the Decision may be made in writing, dated, and signed, and that it may be in duplicate; one copy to be handed to the Representative of the United States of Brazil for his Government, and the other copy to be handed to the Representative of Great Britain for his Government.

Art. X. The High Contracting Parties engage to accept the Decision pronounced by the Arbitrator as a full, perfect, and final settlement of the question referred to him.

Art. XI. The High Contracting Parties agree that the Indians and other persons living in any portion of the disputed territory, which may by the Award of the Arbitrator be assigned either to the United States of Brazil or to the Colony of British Guiana, shall, within eighteen months of the date of the Award, have the option of removing into the territory of the Colony or of Brazil, as the case may be, themselves, their families, and their movable property, and of freely disposing of their immovable property, and the said High Contracting Parties reciprocally undertake to grant every facility for the exercise of such option.

Art. XII. Each Government shall provide for the expense of preparing and submitting its Case. Any expenses connected with the Arbitral proceedings shall be defrayed by the two Parties in equal moieties.

Art. XIII. The present Treaty, when duly ratified, shall come into force immediately after the exchange of ratifications, which shall take place in the City of Rio de Janeiro within four months from this date, or sooner if possible.

In faith whereof we, the respective Plenipotentiaries have signed this Treaty and have hereunto affixed our seals.

Done in duplicate at London, the 6th day of November 1901.

(L. S.) *Lansdowne.*
(L. S.) *Joaquim Nabuco.*

Declaration.

The Plenipotentiaries on signing the foregoing Treaty declare, as part and complement of it and subject to the ratification of the same, that the High Contracting Parties adopt as the frontier between the United States of Brazil and the Colony of British Guiana the watershed-line between the Amazon basin and the basins of the Corentyne and the Essequibo from the source of the Corentyne to that of the Rupununi, or of the Takutu, or to a point between them according to the Decision of the Arbitrator.

(L. S.) *Lansdowne.*
(L. S.) *Joaquim Nabuco.*

97.

ESPAGNE, BOLIVIE.

Traité d'arbitrage; signé à México, le 17 février 1902.*)

Boletin oficial del Ministerio de Estado.

El Enviado Extraordinario y Ministro Plenipotenciario de Su Majestad Católica en Méjico, y el Enviado Extraordinario y Ministro Plenipotenciario de la República de Bolivia en los Estados Unidos Mejicanos, debidamente autorizados por sus respectivos Gobiernos para celebrar ad referendum un Tratado de Arbitraje con el propósito de que ambos Estados resuelvan pacíficamente toda cuestión que pudiera alterar las relaciones de buena amistad que felizmente existen entre ambas Naciones, han convenido en los siguientes artículos:

Artículo I

Las Altas Partes contratantes se obligan á someter á juicio arbitral todas las controversias de cualquier naturaleza que por cualquier causa surgieren entre ellas, en cuanto no afecten á los preceptos de la Constitución de uno ù otro país y siempre que no puedan ser resueltas por negociaciones directas.

Artículo II

No pueden renovarse en virtud de este Tratado las cuestiones que hayan sido objeto de arreglos definitivos entre ambas Altas Partas. En tal caso, el Arbitraje se limitará exclusivamente á las cuestiones que se susciten sobre validez, interpretación y cumplimiento de dichos arreglos.

*) Ratifié.

Artículo III

Para la decisión de las cuestiones que en cumplimiento de este Tratado se sometieren á Arbitraje, las funciones de Arbitro serán encomendadas con preferencia á un Jefe de Estado de una de las Repúblicas hispano-americanas ó á un Tribunal formado por Jueces y Peritos españoles, bolivianos ó hispano-americanos.

En caso de no recaer acuerdo sobre la designación de Arbitros, las Altas Partes contratantes se someterán al Tribunal Internacional permanente de Arbitraje establecido conforme á las resoluciones de la Conferencia de El Haya de 1899, sujetándose en este y en el anterior caso á los procedimientos arbitrales especificados en el capítulo III de dichas resoluciones.

Artículo IV

El presente Tratado permanecerá en vigor durante doce años, contados desde la fecha del canje de sus ratificaciones. En caso de que doce meses antes de cumplirse dicho término, ninguna de la Altas Partes contratantes hubiese declarado su intención de hacer cesar los efectos del presente Tratado, continuará siendo éste obligatorio hasta un año después de que una ú otra de las Altas Partes contratantes lo hubiese denunciado.

Artículo V

Este Tratado será sometido por los infrascritos á la aprobación de sus respectivos Gobiernos, y si mereciese su aprobación y fuese ratificado según las leyes de uno y otro país, se canjearán las ratificaciones en la ciudad de La Paz en el término de un año, contado desde la fecha.

En fe de lo cual los Plenipotenciarios de uno y otro país firman y sellan por duplicado el presente Tratado en la ciudad de Méjico, á los diez y siete días del mes de Febrero del año mil novecientos dos.

(L. S.) *El Marqués de Prat de Nantouillet.*
(L. S.) *Fernando E. Guachalla.*

98.

GRANDE-BRETAGNE, ETATS-UNIS D'AMÉRIQUE.

Documents diplomatiques et sentence rendue par la Cour arbitrale pour régler les différends survenus dans l'exécution du traité du 28/16 février 1825, concernant la délimitation des possessions respectives dans l'Amérique du Nord; du 20 octobre 1903.

Treaty Series. No. 4. 1903.
Parliamentary Papers. Janvier 1904. [Cd. 1877.]

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and the United States of America, equally desirous for the friendly and final adjustment of the differences which exist between them in respect to the true meaning and application of certain clauses of the Convention between Great Britain and Russia, signed under date of the 28th (16th) February, A.D. 1825, which clauses relate to the delimitation of the boundary-line between the territory of Alaska, now a possession of the United States, and the British possessiones in North America, have resolved to provide for the submission of the questions as hereinafter stated to a Tribunal, and to that end have appointed their respective Plenipotentiaries as follows:

His Britannic Majesty, the Right Honourable Sir Michael H. Herbert, K.C.M.G., C.B., His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary; and

The President of the United States of America, John Hay, Secretary of State of the United States;

Who, after an exchange of their full powers, which were found to be in good and due form, have agreed upon the following Articles:

Article I.

A Tribunal shall be immediately appointed to consider and decide the questions set forth in Article IV of this Convention. The Tribunal shall consist of six impartial jurists of repute, who shall consider judically the questions submitted to them, each of whom shall first subscribe an oath that he will impartially consider the arguments and evidence presented to the Tribunal, and will decide thereupon according to his true judgment. Three members of the Tribunal shall be appointed by His Britannic Majesty and three by the President of the United States. All questions considered by the Tribunal, including the final Award, shall be decided by a majority of all the members thereof.

In case of the refusal to act, or of the death, incapacity, or abstention from service of any of the persons so appointed, another impartial jurist of repute shall be forthwith appointed in his place by the same authority which appointed his predecessor.

The Tribunal may appoint a Secretary and a Bailiff to perform such duties as they may prescribe, and may employ scientific experts if found to be necessary, and may fix a reasonable compensation for such officers. The Tribunal shall keep an accurate record of all its proceedings.

Each of the High Contracting Parties shall make compensation for the services of the members of the Tribunal of its own appointment and of any agent, counsel, or other person employed in its behalf, and shall pay all costs incurred in the preparation of its Case. All expenses reasonably incurred by the Tribunal in the performance of its duties shall be paid by the respective Governments in equal moieties.

The Tribunal may, subject to the provisions of this Convention, establish all proper rules for the regulation of its proceedings.

Article II.

Each of the High Contracting Parties shall also name one person to attend the Tribunal as its Agent.

The written or printed Case of each of the two Parties, accompanied by the documents, the official correspondence, and all other evidence in writing or print on which each Party relies, shall be delivered in duplicate to each member of the Tribunal and to the Agent of the other Party as soon as may be after the organization of the Tribunal, but within a period not exceeding two months from the date of the exchange of ratifications of this Convention.

Within two months after the delivery on both sides of the written or printed Case, either Party may, in like manner, deliver in duplicate to each member of the Tribunal, and to the Agent of the other Party, a Counter-Case, and additional documents, correspondence, and evidence in reply to the Case, documents, correspondence, and evidence so presented by the other Party. The Tribunel may, however, extend this last-mentioned period when in their judgment it becomes necessary, by reason of special difficulties which may arise in the procuring of such additional papers and evidence.

If in the Case submitted to the Tribunal either Party shall have specified or referred to any report or document in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party shall demand it, within thirty days after the delivery of the Case, to furnish to the Party applying for it a duly certified copy thereof; and either Party may call upon the other, through the Tribunal, to produce the original or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Tribunal may require; and the original or copy so requested shall be delivered as soon as may be and within a period not exceeding forty days after receipt of notice.

Each Party may present to the Tribunal all pertinent evidence, documentary, historical, geographical, or topographical, including maps and charts, in its possession or control and applicable to the rightful decision of the questions submitted; and if it appears to the Tribunal that there is evidence pertinent to the Case in the possession of either Party, and which has not been produced, the Tribunal may in its discretion order the production of the same by the Party having control thereof.

It shall be the duty of each Party through its Agent or Consul, within two months from the expiration of the time limited for the delivery of the Counter-Case on both sides, to deliver in duplicate to each member of the said Tribunal and to the agent of the other Party a written or printed argument showing the points and referring to the evidence upon which his Government relies, and either Party may also support the same before the Tribunal by oral argument of Counsel. The Tribunal may, if they shall deem further elucidation with regard to any point necessary, require from either Party a written, printed, or oral statement or argument upon the point; but in such case the other Party shall have the right to reply thereto.

Article III.

It is agreed by the High Contracting parties that the Tribunal shall consider in the settlement of the questions submitted to its decision the Treaties respectively concluded between His Britannic Majesty and the Emperor of All the Russias under date of the 28th (16th) February, A.D. 1825, and between the United States of America and the Emperor of All the Russias, concluded under date of the 18th (30th) March, A.D. 1867, and particularly the Articles III, IV and V, of the first-mentioned Treaty, which in the original text are, word for word, as follows:

III. La ligne de démarcation entre les possessions des Hautes Parties Contractantes sur la côte du Continent et les Iles de l'Amérique Nord-ouest, sera tracée ainsi qu'il suit:

A partir du point le plus méridional de l'île dite Prince of Wales, lequel point se trouve sous la parallèle du 54° 40′ de latitude nord, et entre le 131e et le 133e degré de longitude ouest (méridien de Greenwich), la dite ligne remontera au nord le long de la passe dite Portland Channel, jusqu'au point de la terre ferme où elle atteint le 56e degré latitude nord; de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte, jusqu'au point d'intersection du 141e degré de longitude ouest (même méridien); et, finalement, du dit point d'intersection, la même ligne méridienne du 141e degré formera, dans son prolongement jusqu'à la Mer Glaciale, la limite entre les possessions Russes et Britanniques sur le Continent de l'Amérique Nord-ouest.

IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l'Article précédent

1. Que l'île dite Prince of Wales appartiendra toute entière à la Russie.

2. Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte depuis le 56e degré de latitude nord au point d'intersection du 141e degré de longitude ouest, se trouverait à la distance de plus de 10 lieues marines de l'Océan, la limite entre les possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie sera formée par une ligne parallèle aux sinuosités de la côte, et qui ne pourra jamais en être éloignée que de 10 lieues marines.

V. Il est convenu, en outre, que nul établissement ne sera formé par l'une des deux Parties dans les limites que les deux Articles précédents assignent aux possessions de l'autre. En conséquence, les sujets Britanniques ne formeront aucun établissement soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des possessions Russes, telles qu'elles sont désignées dans les deux Articles précédents; et, de même, nul établissement ne sera formé par des sujets Russes au delà des dites limites.

The Tribunal shall also take into consideration any action of the several Governments or of their respective Representatives, preliminary or subsequent to the conclusion of said Treaties, so far as the same tends to show the original and effective understanding of the Parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of said Treaties.

Article IV.

Referring to Articles III,IV and V of the said Treaty of 1825, the said Tribunal shall answer and decide the following questions:

1. What is intended as the point of commencement of the line?
2. What channel is the Portland Channel?
3. What course should the line take from the point of commencement to the entrance to Portland Channel?
4. To what point on the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points?
5. In extending the line of demarcation northward from said point on the parallel, of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition, that if such line should anywhere exceed the distance of 10 marine leagues from the Ocean then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distane therefrom not more than 10 marine leagues, was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe, or strip, of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the Ocean, and extending from the said point on the 56th degree of latitude

north to apoint where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

6. If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast, should the width of the lisière which was to belong to Russia be measured (1) from the mainland coast of the Ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said Convention that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the lisière was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the Ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets?

7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary?

Article V.

The Tribunal shall assemble for their first meeting at London so soon as practicable after receiving their commissions, and shall themselves fix the times and places of all subsequent meetings.

The decision of the Tribunal shall be made so soon as possible after the conclusion of the arguments in the Case, and within three months thereafter, unless His Britannic Majesty and the President of the United States shall by common accord extend the time therefor. The decision shall be made in writing and dated, and shall be signed by the members of the Tribunal assenting to the same. It shall be signed in duplicate, one copy whereof shall be given to the Agent of His Britannic Majesty for his Government, and the other to the Agent of the United States of America for his Government.

Article VI.

When the High Contracting Parties shall have received the decision of the Tribunal upon the questions submitted as provided in the foregoing Articles, which decision shall be final and binding upon all Parties, they will at once appoint, each on its own behalf, one or more scientific experts, who shall, with all convenient speed, proceed together to lay down the boundary-line in conformity with such decision.

Should there be, unfortunately, a failure by a majority of the Tribunal to agree upon any of the points submitted for their decision, it shall be their duty to so report in writing to the respective Governments through their respective Agents. Should there be an agreement by a majority upon a part of the questions submitted, it shall be their duty to sign and report their decision upon the points of such agreement in the manner hereinbefore prescribed.

Article VII.

The present Convention shall be ratified by His Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate, and the ratifications shall be exchanged in London or in Washington so soon as the same may be effected.

In faith whereof we, the respective Plenipotentiaries, have signed this Convention, and have hereunto affixed our seals.

Done at Washington, in duplicate, this 24th day of January A.D. 1903.*)

(Signed) *Michael H. Herbert.*
(Signed) *John Hay.*

Award of the Alaska Boundary Tribunal.

Whereas by a Convention signed at Washington on the 24th day of January, 1903, by Plenipotentiaries of and on behalf of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and of and on behalf of the United States of America, it was agreed that a Tribunal should be appointed to consider and decide the questions hereinafter set forth, such Tribunal to consist of six impartial Jurists of repute, who should consider judicially the questions submitted to them, each of whom should first subscribe an oath that he would impartially consider the arguments and evidence presented to the said Tribunal, and would decide thereupon according to his true judgment, and that three members of the said Tribunal should be appointed by His Britannic Majesty and three by the President of the United States:

And whereas it was further agreed by the said Convention that the said Tribunal should consider in the settlement of the said questions submitted to its decision the Treaties respectively concluded between His Britannic Majesty and the Emperor of All the Russias, under date of the 28th (16th) February, A.D. 1825, and between the United States of America and the Emperor of All the Russias, concluded under date of the 18th (30th) March, A.D. 1867, and particularly the Articles III, IV, and V of the first-mentioned Treaty, and should also take into consideration any action of the several Governments or of their respective Representatives, preliminary or subsequent to the conclusion of the said Treaties so far as the same tended to show the original and effective understanding of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of the said Treaties:

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*) Les ratifications ont été échangées à Washington, le 3 mars 1903.

And whereas it was further agreed by the said Convention, referring to Articles III, IV, and V of the said Treaty of 1825, that the said Tribunal should answer and decide the following questions:

1. What is intended as the point of commencement of the line?

2. What channel is the Portland Channel?

3. What course should the line take from the point of commencement to the entrance to Portland Channel?

4. To what point on the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course shoulo it follow between these points?

5. In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the conditions that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than 10 marine leagues, was it the intention and meaning of the said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe, or strip, of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

6. If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast, should the width of the lisière, which was to belong to Russia, be measured (1) from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said Convention that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the lisière was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets?

7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary?

And whereas His Britannic Majesty duly appointed Richard Everard, Baron Alverstone, G.C.M.G., Lord Chief Justice of England, Sir Louis Amable Jetté, K.C.M.G., Lieutenant-Governor of the Province of Quebec, and Allen Bristol Aylesworth, one of His Majestys Counsel; and the President of the United States of America duly appointed the Honourable Elihu Root, Secretary of War of the United States, the Honourable Henry

Cabot Lodge, Senator of the United States from the State of Massachusetts and the Honourable George Turner, of the State of Washington, to be members of the said Tribunal:

Now, therefore, we, the Undersigned, having each of us first subscribed an oath, as provided by the said Convention, and having taken into consideration the matters directed by the said Convention to be considered by us, and having judicially considered the said questions submitted to us, do hereby make Answer and Award as follows:

In answer to the 1st question

The Tribunal unanimously agrees that the point of commencement of the line is Cape Muzon.

In answer to the 2nd question

The Tribunal unanimously agrees that the Portland Channel is the channel which runs from about 55° 56′ north latitude, and passes to the north of Pearse and Wales Islands.

A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the Portland Channel, after passing to the north of Wales Island, is the channel between Wales Island and Sitklan Island, called Tongass Channel. The Portland Channel above mentioned is marked throughout its length by a dotted red line from the point B to the point marked C on the map signed in duplicate by the Members of the Tribunal at the time of signing their decision.

In answer to the 3rd question

A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the course of the line from the point of commencement to the entrance to Portland Channel is the line marked A B in red on the aforesaid map.

In answer to the 4th question

A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the point to which the line is to be drawn from the head of the Portland Channel is the point on the 56th parallel of latitude marked D on the aforesaid map, and the course which the line should follow is drawn from C to D on the aforesaid map.

In answer to the 5th question

A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the answer to the above question is in the affirmative.

Questions 5 having been answered in the affirmative, question 6 requires no answer.

In answer to the 7th question

A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the mountains marked S on the aforesaid map are the mountains referred to as situated parallel to the coast on that part of the coast where such mountains marked S are situated, and that between the points marked P (Mountain marked S, 8,000) on the north, and the point marked T (mountain marked S, 7,950), in

the absence of further survey, the evidence is not sufficient to enable the Tribunal to say which are the mountains parallel to the coast within the meaning of the Treaty.

In witness whereof we have signed the above-written decision upon the questions submitted to us.

Signed in duplicate this 20th day of October 1903.

(Signed) *Alverstone.*
Elihu Root.
Henry Cabot Lodge.
George Turner.

Witness:
(Signed) *Reginald Tower,* Secretary.

Opinion by Lord Alverstone (1).

Second Question.

What Channel is the Portland Channel?

The answer to this question, as indicated by the learned Counsel on both sides, depends upon the simple question: What did the Contracting Parties mean by the words „the channel called the Portland Channel" in Article III of the Treaty of 1825? This is a pure question of identity. In order to answer it one must endeavour to put oneself in the position of the Contracting Parties, and ascertain as accurately as possible what was known to them of the geography of the district so far as relates to the channel called the Portland Channel.

There are certain broad facts which, in my opinion, establish beyond any reasonable question that the negotiators had before them Vancouver's maps, the Russian map (No. 5 in the British, No. 6 in the American Atlas), Arrowsmith's maps (probably the map numbered 10 in the American Atlas), and Faden's maps (British Appendix, pp. 10 and 11).

I have, moreover, no doubt that the negotiators were acquainted with the information contained in Vancouver's narrative. I do not think it necessary to state in detail the evidence which has led me to this conclusion beyond stating that, quite apart from the overwhelming probability that this was the case, there are passages in the documents which, in my judgment, establish it to demonstration, but, for the purpose of my reasons, it is sufficient to say that I have come to that clear conclusion after the most careful perusal of the documents.

I will now endeavour to summarize the facts relating to the channel called Portland Channel, which the information afforded by the maps and documents to which I have referred, establish. The first and most important is that it was perfectly well known before, and at the date of the Treaty, that there were two channels or inlets, the one called Portland Channel, the other Observatory Inlet, both of them coming out to the Pacific Ocean.

That the seaward entrance of Observatory Inlet was between Point Maskelyne on the south and Point Wales on the north.

That one entrance of Portland Channel was between the island now known as Kannaghunut and Tongas Island.

That the latitude of the mouth or entrance to the channel called Portland Channel, as described in the Treaty and understood by the negotiators, was at 54° 45′.

The narrative of Vancouver refers to the channel between Wales Island and Sitklan Island, known as Tongas Passage, as a passage leading south-south-east towards the ocean—which he passed in hope of finding a more northern and westerly communication to the sea, and describes his subsequently finding the passage between Tongas Island on the north and Sitklan and Kannaghunut on the south. The narrative and the maps leave some doubt on the question whether he intended the name Portland Canal to include Tongas Passage as well as the passage between Tongas Island on the north and Sitklan and Kannaghunut Island on the south. In view of this doubt, I think, having regard to the language, that Vancouver may have intended to include Tongas Passage in that name, and looking to the relative size of the two passages, I think that the negotiators may well have thought that the Portland Channel, after passing north of Pearse and Wales Island, issued into the sea by the two passages above described.

For the purpose of identifying the channel, commonly known as Portland Channel, the maps which were before the negotiators may be useful. This is one of the points upon which the evidence of contemporary maps as to general reputation is undoubtedly admissible. It is sufficient to say that not one of the maps which I have enumerated above in any way contradicts the precise and detailed situation of Portland Channel and Observatory Inlet given by Vancouver's narrative, and the other documents to which I have referred. The Russian map of 1802 shows the two channels distinctly; and the same may be said of Faden's maps, on which so much reliance was placed on the part of the United States.

I do not attach particular importance to the way in which names on the maps are written or printed, and therefore I do not rely upon the fact that, in the case of some of these contemporary maps, the words „Portland Channel" are written so as to include, within the name, the lower part of the channel which is in dispute. From long experience I have found that it is not safe to rely upon any such peculiarities.

After the most careful consideration of every document in this Case, I have found nothing to alter or throw any doubt on the conclusion to which I have arrived, and there are certain general considerations which strongly support it.

Russia and Great Britain were negotiating as to the point on the coast to which Russian dominion should be conceded. It is unnecessary to refer to all the earlier negotiations, but it is distinctly established that

Russia urged that her dominion should extend to 55° of latitude, and it was in furtherance of this object that Portland Channel, which issues into the sea at 54° 45′, was conceded and ultimately agreed to by Great Britain. No claim was ever made by Russia to any of the islands south of 54° 45′ except Prince of Wales Island, and this is the more marked because she did claim the whole of Prince of Wales Island, a part of which extended to about 54° 40′.

The islands between Observatory Inlet and the channel, to which I have referred above as the Portland Channel, are never mentioned in the whole course of the negotiations.

It is suggested on behalf of the United States that Portland Channel included both the channels, namely, the channel coming out between Point Maskelyne and Point Wales, and that running to the north of Pearse and Wales Islands, and that, upon the doctrine of the thalweg, the larger channel must be taken as the boundary. It is sufficient to say that, in my opinion, there is no foundation for this argument. The lengths and the points of land at their entrances are given in the case of each channel by Vancouver in a way which precludes the suggestion that he intended to include both channels under one name, and it must be remembered that he was upon a voyage of discovery, and named these channels when he had discovered and explored them.

Inasmuch as the question submitted to us only involves the determination of the channel described in the Treaty by the words already cited „the channel called Portland Channel," subsequent history can throw no light upon this question; but I think it right to say that the use in the year 1853 of the name Portland Inlet in the British Admiralty Chart, upon which much reliance was placed on behalf of the United States has, in my opinion, no bearing upon the question, and the references to Tongas Island in 1835 as being on the frontier of the Russian Straits, and in 1863 as being on the north side of the Portland Canal, and in 1869 as to Tongas being on the boundary between Alaska and British Columbia, are strongly confirmatory of the view at which I have arrived upon the consideration of the materials which were in existence at the date of the Treaty.

I therefore answer the Second Question as follows:

The Channel which runs to the North of Pearse and Wales Islands, and Issues into the Pacific between Wales Island and Sitklan Island.

(Signed) *Alverstone.*

October 20, 1903.

Opinion by Lord Alverstone (2).

Fifth Question.

In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast, and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe, or strip of coast on the mainland not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

Stated shortly, I understand this question to ask whether the eastern boundary whether fixed by the crest of the mountains or by a distance of 10 marine leagues, was to run round the heads of the bays, ports, inlets, havens, and waters of the ocean, or not, I have come to the conclusion in the affirmative, viz., that the boundary, whether running along the summits or crests of the mountains, or—in the absence of mountains—at a distance of 10 marine leagues, was to run round the heads of the inlets, and not to cross them.

The language of the Treaty of 1825 does not of itself enable this question to be answered distinctly—on the contrary, it contains the ambiguities which have given rise to the discussion upon the one side and the other.

Paragraph 2 of Article III states that the line of demarcation shall follow the summit of the mountains situated parallel to the coast („parallèlement à la côte"). This is the clause upon which the question really depends, because in the event of mountains being found to exist, situated parallel to the coast within a distance of 10 marine leagues, no recourse need be had to Article IV. Article IV, however, is of importance, as it may tend to throw light upon what was the meaning of the word „coast" in Article III; and the words in paragraph 2 of Article IV are „wherever the summits of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at a distance of more than 10 marine leagues from the ocean." It is, in my opinion, correctly pointed out, on behalf of the United States, that the word „coast" is an ambiguous term, and may be used in two, possibly in more

than two, senses. I think, therefore, we are not only entitled, but bound, to ascertain as far as we can from the facts which were before the negotiators the sense in which they used the word „coast" in the Treaty.

Before considering this latter view of the case, it is desirable to ascertain, as far as possible from the Treaty itself, what it means, and what can be gathered from the language of the Treaty alone. The parties were making an Agreement, as the opening words of the Treaty show, as to the limits of their respective possessions on the north-west coast of America, and there cannot be any question that the word „coast" in Articles I and II refers to the north-west coast of America. In Article III the opening words, „upon the coast of the continent," also refer to the north-west coast of America. The first ambiguity arises upon the word „coast" in the phrase „parallel to the coast" in the description of the boundary in Article III, and as to the word „coast" in the words „parallel to the coast" in the second paragraph of Article IV, and the words „the line of coast" and „the windings of the coast" in the same paragraph. Article V does not bear directly upon the question in dispute, but the words „or upon the border of the continent" („lisière de terre ferme"), which follow the words „upon the coast", afford some slight guide to the meaning of the word „coast" in Article III. The word „coast" in Article VI evidently means the coast of the continent, as it is in contrast with the words „ocean" and „the interior". I postpone the consideration of the meaning of the word „coast" in Article VII, as it raises a very important question, which is in controversy. Considering these various passages, and the use made of the word „coast" therein, do they enable one, without reference to the previous negotiations, to answer the question as to whether the strip of territory mentioned in Article III was to run round the heads of the bays and inlets, or to cross them? I am of opinion that they do not. The broad, undisputed facts are that the parties were engaged in making an Agreement respecting an archipelago of islands of the coast and some strip of land upon the coast itself. The western limit of these islands extends in some places about 100 miles from the coast, and the channels or passages between the islands and between the islands and the coast are narrow waters of widths varying from a few hundred yards to 13 miles. In ordinary parlance no one would call the waters of any of these channels or inlets between the islands, or between the islands and the mainland, „ocean". I agree with the view presented on behalf of Great Britain, that no one coming from the interior and reaching any of these channels, and particularly the head of the Lynn Canal or Taku Inlet, would describe himself as being upon the ocean; but, upon the other hand, it is quite clear that the Treaty does regard some of these channels as ocean. For instance, to take points as to which no question arises, between Wrangell Island, Mitkoff Island, and Kupreanoff Island, all of which are north of latitude 56, it cannot, I think, be disputed that, for the purpose of the Treaty, the waters between these islands and the mainland were included in the word „ocean",

and that the coast upon which the eastern boundary of the lisière was to be drawn was the coast of the continent, and the mountains referred to in Article III were to be upon that coast, and the line referred to in paragraph 2 of Article IV was to be measured from those waters. This consideration, however, is not sufficient to solve the question; it still leaves open the interpretation of the word „coast" to which the mountains were to be parallel.

Now, it is to be observed that primá facie the eastern boundary is to be fixed under Article III; as already pointed out, it is not necessary to have recourse to Article IV unless the mountains which correspond to those described in Article III prove to be at a distance of more than 10 marine leagues from the ocean. Assuming that the boundary is being determined in accordance with Article III, the mountains which are on the continent are to be parallel to the coast, and a person fixing the boundary under Article III would not leave the line which follows the summits or crest of the mountains unles that line was situated at more than 10 marine leagues from the ocean, As I have already pointed out, for a considerable part of the distance referred to in Article III, namely, from the southern end of Wrangell Island up to the northern end of Kupreanoff Island, the distance must be measured from the shore of these inland waters, which, and which alone, are the ocean referred to in Article IV. I am unable to find any words io the Treaty which direct that the mountain line contemplated by Article III shall cross inlets or bays of the sea. In so far as the language of Article III of itself is a guide, it does not seem to me to contemplate such a state of things. Of course, if the main contention of Great Britain can be adopted, viz., that the words „line of coast" and „windings of the coast," in § 2 of Article IV, should it be necessary to have recourse to that paragraph, mean the general line of coast or the windings of the general coast, excluding inlets, the difficulty would disappear; but, in oder to establish that position, it seems to me that Great Britain must show that the Treaty uses the word „coast" in the second paragraph of Article III, and in the second paragraph of Article IV, in that sense.

I see some broad objection to this view. In the first place it necessitates the word „coast" being used with two different meanings in the same clause; and, secondly, it makes it necessary to assume a view of the geographical position as being known to the negotiators, or to postulate that they assumed some definition, or common understanding, as to what the general line of the coast was.

There is, as far as I know, no recognized rule of international law which would by implication give a recognized meaning to the word „coast" as applied to such sinuosities and such waters different from the coast itself.

As I have said more than once, the locus in quo to which the Treaty was referring precludes the possibility of construing the word „coast" in any particular Article in any special way, if it does not refer to the coast-line of the continent. I think the words, „upon the border of the con-

tinent (lisière de terre ferme) comprised within the limits of the Russian possessions," in Article V, rather confirm the view that Russia was to get a strip all along the continent, but I do not think that much reliance can be placed upon this because of the provision as to rivers and streams in Article VI.

Before leaving the Treaty, it is, in my opinion, necessary to notice the very important argument put forward by Great Britain, founded upon Article VII. It was contended by Great Britain that the words „gulfs havens, and creeks on the coast mentioned in Article III," referred only to the gulfs, havens, and creeks on the lisière or strip bounded as described in that Article. If Great Britain could have made good that contention it would, in my opinion, have afforded the strongest argument that the Treaty contemplated that the lisière or strip might cross bays, inlets, and arms of the sea; but in my opinion the contention cannot be successfully maintained.

The coast mentioned in Article III is, in my opinion, the coast of the continent, and the coast referred to in the second paragraph of Article IV is also the coast of the continent. The lisière, ascertained by drawing the boundary in accordance with the direction in Article III, is a strip upon the coast, and would not, I think, be naturally described by the words „the coast mentioned in Article III." My view is that the provisions of Article VII are perfectly general, and gave mutual rights for a period of ten years to Russia and Great Britain respectively in respect of their possessions upon the north-west coast of America.

Turning now from the consideration of the language of the Treaty alone, what light is thrown upon this question by reference to the negotiations?

After most careful examination, I have been unable to find any passage which supports the view that Great Britain was directly or indirectly putting forward a claim to the shores or ports at the head of the inlets. This is not remarkable, inasmuch as no one at the time had any idea that they would become of any importance.

In March 1824, among the objects desired to be secured by Great Britain are stated to be the „embouchures" of such rivers as might afforded an outlet. In the proposals referred to in the same letter the lisière is spoken of as a strip of land on the mainland, also as a strip of land on the coast of the continent. In the same documents the boundary is spoken of as „the mountains which follow the windings of the coast," and in correspondence of July 1824 as „following the sinuosities of the coast along the base of the mountains nearest the sea," and „the base of the mountains which follow the sinuosities of the coast," and „mountains designated as the boundary shall extend down to the very border of the coast." It is sufficient to say that these passages certainly do not suggest, or imply, that the line from summit to summit will cross any substantial arm of the sea; and that it was not so understood by the negotiators for Great Britain, seems to me to follow from the passage in the letter of the 24th July, 1824, in which Great Britain consented to substitute

the summit of the mountains for the seaward base, and suggested that a stipulation should be added that no fort should be established, or fortification erected, by either party, on the summit or in the passes of the mountains. It is difficult to see how such words could be applicable if it was contemplated that there might be a gap of 6 miles between summit and summit crossing the water. I have only to add upon this point that the language of both the British and Russian Representatives, in reporting the conclusion of the Treaty to their respective Governments, is in accordance with the view which I have suggested.

In have felt it my duty to express reasons which have led me to the conclusion to which I have come, that the answer to the Fifth Question should be in the affirmative, because I am constrained to take a view contrary to that presented by the advocates on behalf of Great Britain; but it must not be thought that I am insensible to the fact that there are strong arguments which might be urged in favour of the British view. I have little doubt that, if shortly after the making of the Treaty of 1825 Great Britain and Russia had proceeded to draw the boundary provided by the Treaty in accordance with the terms thereof, the difficulties, and in certain events, the impossibilities, of drawing a boundary in strict accordance with the Treaty would have been made evident. If, for instance, it had become necessary to draw a boundary in accordance with paragraph 2 of Article IV of the Treaty, I believe that the view expressed by both the American and British authorities, that it is impossible to do so, would at once have become apparent. And in the same way, if the contention of the United States be well founded that no mountains exist on the coast which correspond with the Treaty, a further difficulty would have been made manifest.

I can therefore, well understand and appreciate the contention of Great Britain, that, under the existing state of circumstances, difficulties in delimiting the boundaries described must arise in one view, and might arise in any view. But these considerations, strong as they are in favour of a just and equitable modification of the Treaty, do not in my opinion enable one to put a different construction upon the Treaty. I think that the parties knew and understood what they were bargaining about, and expressed the terms of their bargain in terms to which effect can be given. The fact that when, sixty-five years later, the representatives of the two nations attempted to draw the boundary in accordance with the Treaty, they were unable to agree upon its meaning, does not entitle me to put a different construction upon it.

In the view I take of the terms of the Treaty itself, it is not necessary to discuss subsequent action. Had the terms of the Treaty led me to a different conclusion, and entitled me to adopt the view presented by Great Britain, I should have felt great difficulty in holding that anything that had been done or omitted to be done by, or on behalf of, Great Britain, or that any conduct on her part, prevented her from insisting on the strict interpretation of the Treaty; nor do I think that the

representations of mapmakers that the boundary was assumed to run round the heads of the inlets could have been properly urged by the United States as a sufficient reason for depriving Great Britain of any rights which she had under the Treaty, had they existed.

I therefore answer this question in the affirmative.

October 20, 1903.

(Signed) *Alverstone.*

Opinion By Mr. Aylesworth.

As the majority of the members of the Tribunal have arrived at a conclusion which is entirely opposed to what, „according to my true judgment", is the plain meaning of the Treaty we have to interpret, it appears necessary that I should state as briefly as I am able a few of the many reasons which compel me to dissent altogether from their Award.

With regard to the point of commencement of the boundary line no question arises, as all parties agree that it is Cape Muzon.

Upon the second question I quote the words of the President of this Tribunal, the italics, except in one instance, being my own.

Among the facts relating to Portland Channel he finds

„That the latitude of the month or entrance to the channel called Portland Channel, as describted in the Treaty and understood by the negotiators, was at 54° 45′.

Among the general considerations which support his conclusion he states that.

„Russia and Great Britain were negotiating as to the point on the coast to which Russian dominion should be conceded. It is unnecessary to refer to all the earlier negotiations; but it is distinctly established that Russia urged that her dominion should extend to 55° of latitude, and it was in furtherance of this object that Portland Channel, which issues into the sea at 54° 45′, was conceded and ultimately agreed to by Great Britain. No claim was ever made by Russia to any of the islands south of 54° 45′ except Prince of Wales Island, and this is the more marked, because she did claim the whole of Prince of Wales Island, a part of which extended to about 54° 40′.

„The islands between Observatory Inlet and the channel, to which I have referred above as the Portland Channel, are never mentioned in the whole course of the negotiations."

These extracts are from Lord Alverstone's Memorandum, expressing his considered judgment on this branch of the case. These conclusions have been arrived at after full discussion among ourselves of the answer which, upon the evidence, should be given to the second question — in which discussion each member of the Tribunal has stated, at length, his individual views. Concurring, as I do, in the findings of fact stated in this Memorandum, I should have contented myself with differing from the conclusion reached but for the course our proceedings have taken.

Consideration of the second question has been to-day resumed, and by unanimous vote of the Tribunal it has been affirmed that each member, „according to his true judgment," believes the Portland Channel mentioned in the Treaty to be the channel extending towards the sea from latitude 55° 56′, and lying to the north of Pearse and Wales Islands. But, notwithstanding this unanimous finding of fact, it has been, by the majority of the Tribunal, decided that the boundary line, starting from Cape Muzon, shall run to the south, instead of to the north, of Kannaghunut and Sitklan Islands, and so shall enter Portland Channel between Sitklan and Wales Islands.

This course for the boundary is directly opposed to the distinct findings made, and the whole line of reasoning adopted by the President in his Memorandum of reasons for the decision. It is a line of boundary which was never so much as suggested in the written Case of the United States, or by Counsel, during the oral argument before us. No intelligible reason for selecting it has been given in my hearing. No Memorandum in support of it has been presented by any member of the Tribunal, and I can, therefore, only conjecture the motives which have led to its acceptance.

It is admitted by everybody as absolutely clear and indisputable that on the occasion of his naming Portland Canal, Vancouver, in his exploration of that channel, traversed it from its head inland to its entrance into the ocean in latitude 54° 45′, that, in so doing, he sailed down Portland Channel, along the passage north of Pearse and Wales Islands, and straight onward to the sea through the passage north of Sitklan and Kannaghunut Islands. Every one knows and admits that Vancouver never traversed the passage between Sitklan Island and Wales Island, through which this boundary line is now made to run. No more can it be pretended that this passage (which is now called Tongass Passage) was ever named by Vancouver, was ever treated by him, or by any mapmaker at any time, as in any way belonging to Portland Canal, or was ever thought of by those who negotiated the Treaty of 1825 as being any part of that channel.

The Lord Chief Justice finds as a fact, which the maps and documents establish, that one entrance of Portland Channel was between the islands now known as Kannaghunut and Tongass. I concur entirely in this finding, but must add that this entrance to the channel is the only entrance to it ever known, or in any way treated as part of the channel.

There is simply not the slightest evedence anywhere, that I am able to find, that either Vancouver or any subsequent explorer or mapmaker ever considered, or so much as spoke of, Portland Channel as having two entrances to the ocean, or as including the passage through which this boundary line is now made to run.

But even if there were two or more such entrances, Vancouver's narrative and maps absolutely fix the one he explored and named by giving its exact latitude to the minute—54/ 45′. And the President finds, as

a fact, that this mouth, or entrance, is the one „described in the Treaty and understood by the negotiators."

By what right, then, can this Tribunal, sitting judicially, and sworn to so determine and answer the questions submitted, reject the channel so „described in the Treaty and understood by the negotiators", and seek for a totally different channel, which, until now, no one ever thought of as any part of the Portland Channel mentioned in the Treaty?

I point to the additional circumstances so forcibly stated by my Lord. The whole negotiations were as to the „point on the coast" to which Russia's southern boundary should be carried. The Treaty fixes as that point the promontory of the mainland immediately to the north of Kannaghunut and Sitklan Islands, the latitude of which is 54° 45′. The next point of mainland coast to the southward is Point Maskelyne, and it, of course, is undisputably British territory. The islands which lie batween were never asked for by Russia. As the President's Memorandum says, they were never so much as mentioned in the whole course of the negotiations. They lie wholly to the southward of 54° 45′, wholly to the southward of that entrance to Portland Channel which alone is „described in the Treaty," or was „understood by the negotiators," that is to say, wholly to the southward of the true boundary, and yet the majority of this Tribunal is prepared to take two of those islands from Canada and transfer them to the United States.

How can such a determined be reconciled with our duty to decide judicially upon the question submitted to us?

It is no decision upon judicial principles; it is a mere compromise dividing the field between the two contestants.

The formal answer which the President's Memorandum makes to the question submitted is alone sufficient to condemn the boundary the Tribunal is making. Question: „What channel is the Portland Channel?" Answer: „The channel which runs to the north of . . . . . the Islands of Sitklan and Kannaghunut, and issues into the Pacific between Wales Island and Sitklan Island."

This language simply disregards entirely the relative position of the islands in question. Wales Island lies due east of Sitklan. But the channel which runs to the north of Sitklan and Kannaghunut joins the ocean there, and therefore, of necessity issues into the Pacific at that place, and it is the undoubted mouth of Portland Channel. The Treaty makes Portland Channel the boundary, and if, as this answer formally states, Portland Channel is that channel which runs to the north of these two islands, such two islands are necessarily British soil.

The whole truth of the matter is simply this: that, as to Portland Channel, the case of Great Britain before us has been demonstrated to be unanswerable. By unanimous vote of this Tribunal it has been so declared. It was, therefore, impossible to avoid awarding to Great Britain the Islands called Pearse and Wales. It is equally impossible upon any intelligible principle for a Tribunal, acting judicially, to hold that Port-

land Channel, immediately on passing Wales Island, makes a turn at right angles to itself, and runs between the Islands of Wales and Sitklan. The sole question presented to us for decision on this branch of the case was whether the Portland Channel of the Treaty lay north of the four islands or south of the four, and until to-day it has been uniformly admitted by everybody that all four of these islands belonged, all together, either to Great Britain or to the United States. Instead of so finding, the majority of the Tribunal have chosen to compromise with the plain facts of the case, and, while awarding Pearse and Wales Islands to Great Britain, have determined to make those islands valueless to Great Britain or to Canada by giving to the United States the islands called Sitklan and Kannaghunut. The latter islands are of the utmost consequence, for they lie directly opposite to, and command the entrance to, the very important harbour of Port Simpson, British Columbia.

Upon such findings of fact as those above described, and after a solemn adjudication that the Portland Channel of the Treaty lies to the north of Pearse and Wales Islands, the taking of the two important islands, Sitklan and Kannaghunut, from Canada, and giving them to the United States by a proceeding said to be judicial, is, „according to my true judgment," nothing less than a grotesque travesty of justice.

In considering Questions 5, 6, and 7, the practical inquiry before us is where, upon the ground, the line of boundary described in the Treaty ought to be laid down. That line, from the 56th parallel to the 141st meridian, is to follow „la crête des montagnes situées parallèlement à la côte." Our duty is, therefore, to find what mountains those are which the High Contracting Powers intended to describe by the words just quoted.

To do so we must first determine the meaning of the words „la côte," by reference to which the particular mountains meant by the Treaty are to be identified.

It may be that the word „coast" is generally used as meaning the edge of the land next to the sea, or the line where the water and the land meet, though the double word „coast-line" would more accurately express that idea, but the word „coast" has another well-recognized signification. It frequently means the frontier of a country or territories near to the sea.

„Herod . . . . slew all the children that were in Bethlehem and in all the coasts thereof." — Matthew ii, 16.

„The Jews . . . . raised persecution against Paul and Barnabas, and expelled them out of their coasts." — Acts xiii, 50.

Exactly the same usage obtains in French in regard to the words „la côte."

In the Treaty of 1825 the word is used sometimes in the one sense, sometimes in the other, as the context will readily demonstrate.

The preamble speaks of the possessions of the two Powers „on the north-west coast of America."

Article I secures to the subjects of both Powers the right to land for purposes of trade at any unoccupied places „on the coasts."

Article II prohibits landing without permission at any establishment „on the north-west coast."

Article III defines a line of boundary between the possessions of the Powers „upon the coast of the continent."

Articles IV and VI each speak of „la lisière de côte" which is to belong to Russia.

In all these cases the word is used in its territorial signification.

But in Articles III and IV the word is used as well in another sense. By Article III the boundary line, on leaving the 56th parellel, is to follow the top of the mountains „situées parallèlement à la côte," By Article IV, if these mountains should anywhere turn out to be more than 10 leagues „from the ocean," the line is there to run parallel to the „sinuosités de la côte," but so as never to be more than 10 leagues away from it.

It is perfectly plain that „la côte" here does not mean territorial possessions. The word is undoubtedly used in the same Treaty and in the same Article of the Treaty in different senses.

With what signification, then, is the word used in the instances just quoted?

Plainly, in Article IV the meaning is synonymous with the edge „of the ocean." The 10 leagues spoken of are to be measured „from the ocean" or „from the coast." The result of the measurement must be the same in either case — therefore, water which is not the ocean cannot have a „coast-line" from which the measurement of the 10 leagues could be made.

This consideration alone seems to me to demonstrate that the head of such an inlet as the Lynn Canal forms no part of the coast-line within the contemplation of this Treaty. It would seem to me ridiculous to speak of a ship as making an ocean voyage while sailing along Lynn Canal. It may be answered that the waters of Stephen's Passage, or at the mouth of the Stikine, are not ocean either, and I agree that such waters are, by reason of the outlying islands opposite, territorial waters, and not the open ocean, but in this Treaty the Powers were, with reference to the lisière, dealing with mainland coast alone, and, in that regard, speaking and contracting exactly as though no islands existed, and as though the shore of the mainland were washed by the open sea.

Lynn Canal, from Point Couverden to Skagway, is some 90 miles in length, and of a width varying from 2 or 3 to 7 or 8 miles. It is occupied at its mouth by islands which divide the entrance into three channels, of which the widest is not more than 3 nautical miles across, and each of the other two less than half that size. It is simply a land-locked lake of salt water, literally one of „les mers intérieures" mentioned in Article VII of the Treaty.

If it were a question of determining the coast-line of Lynn Canal itself, such line would undoubtedly cross these islands at the entrance,

just as the coast-line of Lake Ontario would cross from island to island where the waters of the lake, flowing through the Thousand Islands, become the River St. Lawrence.

Such line, crossing at its narrowest part the entrance of Lynn Canal from shore to shore, passing over the islands which lie in such entrance and the three intervening channels of water, is literally the dividing line between Lynn Canal on the one side of it and the ocean on the other. Such line, in my opinion, is part of the line of „coast" mentioned in Article IV, and the descriptive portion of Article III, of the Treaty.

The whole negotiations leading to the Treaty of 1825 grew out of the Russian Ukase of 1821, prohibiting foreign vessels from approaching the coast of North-west America, within 100 miles. The language of the Ukase in which this prohibition is worded contrasts the coasts with the islands, and shows that the coast of the mainland was that from which the 100 miles were intended to be measured, and M. Poletica, writing to Count Nesselrode (November 3, 1823) se describes it, saying that this Edict had extended the maritime jurisdiction of Russia to the distance of 100 miles „des côtes de la terre ferme."

The mainland coast-line within the meaning of this Ukase would, beyond doubt, cross Lynn Canal at the entrance, and Russia would have laughed at a foreign navigator contending that his ship off the entrance to Lynn Canal, at say 30 miles distance, was not transgressing the Ukase, or that she was not within 100 miles of the coast, because she was more than 100 miles from the head of Lynn Canal inland.

Ignoring the presence of the islands in front of the lisière, as we must do in considering what meaning the makers of this Treaty attached to the words „la côte" when applying them to the mainland of the continent, it is too plain for argument to the contrary that the waters of Lynn Canal are territorial or inland waters, as distinguished from the main sea or the high sea.

It is the open uninclosed waters of the ocean, and not waters within the fauces terræ on the sea coast which constitute the high sea.

United States of America v. Grush (1829), 5 Mason 290.

Manchester v. Massachusetts (1890), 139 U.S., 139.

So, leaving the islands out of consideration, the mainland coast-line from which, if the islands were absent, one would have to measure the 3-mile strip of territorial sea water over which the Power owning the lisière would have jurisdiction would pass from headland to headland, following in a general way the windings of the natural shore, but never entering long and narrow inlets or departing substantially from the general trend of the coast.

That the Plenipotentiaries who negotiated the Treaty considered the coast as not ascending such an inlet as Lynn Canal is abundantly evident from their language. They considered the head of Lynn Canal as not ocean, but something very different. This is clearly shown by the language

in which they speak of Portland Channel, an inlet of practically indentical character, though not extending so far inland.

In their observations on Sir Charles Bagot's amended proposal (February-March 1824), the Russians speak of Portland Channel as having its „origine dans les terres" at the 56th parallel.

In writing Count Lieven, under date the 5th (17th) April, 1824, Count Nesselrode says the Russians were willing to fix as their southern boundary Portland Canal „dont l'embouchure dans l'océan est à la hauteur de l'Ile du Prince de Galles et l'origine dans les terres entres 55e et 56e degrés de latitude."

It certainly never could have been Count Nesselrode's idea that the head of Portland Canal, 80 miles from its „embouchure dans l'océan," was none the less ocean, and no more ought any one now to think he could persuade an impartial mind that the head of Lynn Canal, still further inland, was the Pacific Ocean.

Reference may well be made also to the language of the Russian „contre-projet" of August 1824, by Article 1 of which it is proposed that the boundary-line shall ascend Portland Channel „jusqu'au point où cette passe se termine dans l'intérieur de la terre ferme."

In the draft of the proposed Treaty forwarded by Mr. George Canning to Mr. Stratford Canning on the 8th December 1824, the boundary-line was described as to ascend Portland Channel till it strikes „the coast" of the continent in the 56th degree of north latitude. Translating this document into the French language, Mr. Stratford Canning submitted his final „projet", in which it is proposed that the boundary-line shall ascend Portland Channel until it reaches „la côte de terre ferme" at the 56th parallel. M. Matusevich, for the Russian Government, recognizing the impropriety of describing the head of such a channel as „the coast", changed the phraseology into „l'endroit où cette passe se termine dans l'intérieur de la terre ferme".

Surely, under such circumstances, Russia could never afterwards have pretended that the head of Portland Channel, or of any similar inlet, was upon the coast or formed part of the coast.

It seems to me equally an utter misapprehension and preversion of language to term a long, narrow fiord such as Lynn Canal a mere „sinuosité de la côte", parallel to the sides of which the Treaty intended this boundary-line to be drawn. The coast „parallèlement" to which the mountains forming the boundary are situate is, in my opinion, clearly the general trend or direction of the mainland coast-line, disregarding alike narrow inlets and narrow peninsulas—cutting of a headland, it may be, where physical features justify it, or crossing the mouth of an inlet as readily as though it were the mouth of a river. And it seems to me of much importance to note that this was the view adopted by the Superintendent of the United States' Coast and Geodetic Survey when issuing to his assistants instructions for their work of survey under the Convention of the 22nd July 1892. It was upon this footing that the

work of survey was done by the United States' and British Governments, and the object of such survey was to ascertain the facts and data necessary to the permanent delimitation of the boundary-line. This work, done upon this principle by the parties now litigating, affords to us by their Convention the information upon which the boundary-line must now be established in accordance with the spirit and true intent of the Treaty in regard to it.

From such general trend of mainland coast-line the inner boundary of the lisière can never be more than 10 marine leagues distant; it may be much less if, nearer to the coast, mountains exist such as the Treaty contemplates.

Such a coast-line will follow literally the windings of the coast („les sinuosités de la côte"), but will not depart from such coast to penetrate the interior 80 or 90 miles along a salt-water inlet any more than it would ascend for that distance a fresh-water river of possibly equal width.

If this is the true meaning of the words „la côte" as used in the Treaty in describing the boundary-line, such boundary-line must inevitably cross any inlet which is deeper than the maximum width of the lisière and leave the head waters of such inlet within British territory, and in my judgment, the Treaty itself furnishes conclusive inherent evidence that such result was exactly what the Powers entering into it contemplated.

By Article VII of the Treaty the vessels of the two Powers were for ten years to be reciprocally at liberty to frequent, for purposes of fishing and trading, all the inland seas, gulfs, havens, and bays, „sur la côte mentionnée dans l'Article III."

What waters, then, were these, to frequent which the Russians were accepting from Great Britain a ten years' licence?

If it can be shown that these waters were those of the lisière, or that the Russians so understood, it follows that they contemplated the boundary-line at least possibly crossing inlets, and leaving the upper waters of such inlets within British territory.

The waters are those „sur la côte mentionnée dans l'Article III," but Article III speaks first of the possessions of the High Contracting Parties „sur la côte du continent," and afterwards of the boundary of the lisière on the mountains „situées parallèlement à la côte."

Is it, then, the coast of the continent or the coast of the lisière to which Article VII refers?

Let the history of the Article as traced from the negotiations give the answer.

Mr. George Canning firsts proposed it in his letter to Count Lieven of 29th May, 1824, and in his draft Convention forwarded from London on 12th July following.

As to the lisière, the proposal was (Article III, 2) that British subjects should for ever freely navigate and trade along its coast, nothing being offered to Russian subjects as to British waters there. But with regard

to the other parts of the north-west coast of America, Article V proposed that for years the vessels of the respective Powers and of their subjects should reciprocally enjoy the liberty of visiting for purposes of fishery and commerce the gulfs, havens, and creeks in places not already occupied.

Article V in this draft did not affect the lisière now in question, and made no mention of any right to either Power to fish or trade in „les mers intérieures" of the other's territory. Article V, as so presented to Russia, was merely an offer by Great Britain of a temporary licence to fish and trade in British waters south of Portland Channel upon Russia according to Great Britain, similar licence in respect of Russian waters west of Mount St. Elias. But the Russians were unwilling to concede to Great Britain the right to navigate and trade along the coast of the lisière for ever, and with regard to the other parts of the continental coast, having never asked from Great Britain any privileges of fishing or trading south of Portland Channel, they absolutely refused to grant to her similar privileges north of the 60th parallel, or, which is to say, west of Mount St. Elias.

In his letter to Count Lieven of 31st August (4th September), 1824 (App., Br. Case at p. 98, last paragraph, and p. 99 first paragraph), Count Nesselrode is emphatic and indignant in his declaration that except as to the lisière, no concession whatever in regard to either fishing, hunting, or trading would be made to Great Britain. Adhering firmly to this determination as the Russians did, refusing inflexibly to grant to Great Britain any fishing or trading privileges west of Mount St. Elias, with what grace could Russia have demanded what she had never before asked, viz., exactly such privileges in the British territories south of Portland Canal?

Nor was any such suggestion made. On the contrary, in the same letter Count Nesselrode was careful to point out (App., Br. Case, p. 99, last paragraph), that Russia was leaving free to the trade of future establishments which English Companies might form on the north-west coast „tout le territoire situé au midi du Portland Channel."

After consideration of Count Nesselrode's despatch, Mr. George Canning, on the 8th December, 1824, instructed Mr. Stratford Canning to conclude the Treaty, accepting in above respects the objections of Russia, and saying

„We are content also to assign the period of ten years for the reciprocal liberty of access and commerce with each other's territories."

This was in its very terms that which alone Russia had signified she would agree, to, viz., reciprocity in access and commerce limited in time to ten years, and limited in extend to the waters between Mount St. Elias and Portland Canal. Between these points Britain could not possibly have any waters to give except the heads of inlets.

In the draft Convention which accompanied these instructions to Mr. Stratford Canning, the Article which is now No. VII of the Treaty was amended by inserting therein the words „the inland sea" before the words „gulfs, havens, and creeks", which alone had appeared in the corre-

sponding Article of the draft Convention sent by the same Minister to Sir Charles Bagot five months before.

There is no body of water between Mount St. Elias and Portland Channel of which these words are so apt a description as they are of Lynn Canal.

In his „projet", submitted to the Russian Plenipotentiaries, Mr. Stratford Canning changed the words „the inlands sea" to „toutes les mers intérieures", as they stand in Article VII of the Treaty as signed.

In Mr. Stratford Canning's „projet", as amended by the Russians in the handwriting of M. Matusevich, it is absolutely clear that the Russians understood the ten years' licence of fishing and trading they were giving to the British, and reciprocally receiving from the British, related to the waters of the lisière, and to no other waters whatever. The wording of the Article is „toutes les mers intérieures, les golphes, havres, et criques dans les parties de la côte mentionnées dans l'Article III", while in Article III the only coast mentioned, and the only parts of the coast included, are the „coast" and the parts of it between latitude 54° 40′ and longitude 141.

In the Treaty, as finally signed, the words „dans les parties de la côte" become simply „sur la côte", and the possessions of the Powers are, in Article III, described as „on the coast of the continent" instead of as „on the continent", but the true meaning and intention of the parties has been in no way altered thereby, and from the time of Count Nesselrode's refusal to treat as to reciprocal trading rights elsewhere than in the lisière and Mr. Cannings acquiescence in such refusal, no further negotiations whatever on that subject took place.

I am, therefore, of the clear opinion that Russia, by the Treaty in question, intended and understood that the boundary-line might cross inlets which would penetrate and divide the lisière exactly as a river would, and that, in that event, the heads of such inlets would lie within British territory, exactly as the upper reaches of a river would where that river flowed across the lisière.

With reverence to the seventh question, as the majority of the Tribunal has decided that the mountains which shall from the eastern boundary of the lisière are to be sought inland at some place behind the head waters of invery inlet, it is idle for me to express my views at any length.

Over and over again in the negotiations this „lisière de côte" which Russia was asking and England giving was spoken of by the Russians as a mere „point d'appui", as extending inland only „une très petite distance," as being only „une étroite lisière sur la côte même," or „une simple lisière du continent."

Consistently with this understanding of the width of the lisière, the mountains which were to form the inner boundary are always spoken of as being very near to the sea. The only knowledge of these mountains the negotiators of the Treaty had was derived from Vancouver's travels,

and Vancouver had seen the mountains only from his ships as these explored the coast.

The mountains nearest the sea for the whole length of the lisière are, in fact, lofty peaks, 3,000 feet or more in height, often rising to double or treble that elevation, and sometimes exceeding 15,000 feet. It is manifest that from the water, and close to shore, as Vancouver's course lay, mountains such as these would completely shut out any view of the country further inland. Except for possibly an occasional glimpse between seaward peaks of another mountain further away, Vancouver could have no knowledge what the nature of the country was behind the mountains he saw, and the language used by those who negotiated the Treaty of 1825 shows that the extent of their knowledge was in this regard equally limited.

Under such circumstances, it is difficult for me to understand how the Treaty, when it speaks of „montagnes situées parallèlement à la côte," can refer to mountains miles inland, invisible from the sea, which lie far behind the seaward mountains, and which it is an admitted impossibility that Vaucouver ever saw or the negotiators of the Treaty ever knew the existence of.

The words of the Treaty, „montagnes situées parallèlement à la côte," and the idea of parallelism thereby conveyed, imply the line of mountains next adjacent to the coast. Apart from the circumstance that no kind of reason can be assigned for skipping over one or two or it may be half-a-dozen, lines of mountains between the coast and the boundary, the very fact that the Treaty couples the boundary-line directly with the coast-line argues in favour of the first line of mountains being meant. I think any one who spoke of two lines as parallel one to the other would scarcely have in contemplation a third line parallel to each, but situate between the two.

In the present case we have, moreover, the circumstance that throughout the negotiations preceding the Treaty, these mountains are invariably spoken of as near to the coast.

In February 1824 the first proposal of Russia as to the line (p. 70, Br. Case, App.) was that it should follow Portland Canal „jusqu'aux montagnes qui bordent la côte."

Repeating this proposal in their observations on Sir Charles Bagot's amended proposal, the Russians say they would make the limit of the lisière to the east the chain of mountains „qui suit à une très petite distance les sinuosités de la côte".

In narrating to Count Lieven the course of these negotiations, Count Nesselrode, in his letter of the 5th (17th) April 1824, says they were willing their eastern frontier should run along the mountains „qui suivent les sinuosités de la côte".

On Sir Charles Bagot's despatches reaching England, the Hudson's Bay Company suggested that the boundary ought to be fixed at the „nearest chain of mountains not exceeding a few leagues off the coast".

Thereupon, Mr. George Canning sent to Sir Charles Bagot a draft Convention, with instructions to conclude the negotiations. In these instructions (12th July 1824) Mr. Canning directs that the line of boundary be drawn along the „base of the mountains nearest the sea",

This draft Convention prepared by Mr. Canning shows very clearly his understanding of the trifling width the lisière would have, as it contains a provision (not carried into the final Treaty; as the Russians objected) that the British should for ever have the right to trade „su la dite lisière de côte, et sur celle des isles qui l'avoisinent."

Mr. Canning's proposal that the boundary should be drawn along the base line of the mountains was objected to by Count Lieven for the reason, among others, that, considering the little certainty there then was in the geographical knowledge anybody had of the regions they were negotiating about, it would not be impossible that the mountains they were fixing as a boundary „s'etendissent par une pente insensible jusqu'aux bords même de la côte."

This language makes its absolutely certain that the Russians understood their boundary to be the mountains nearest the sea.

On their proposing to take the top instead of the base of these mountains as the line of boundary Mr. Canning assented, and the existing Treaty resulted. It is not pretended that any change in the particular mountains intended was ever made or suggested. Whatever mountains those were, the base of which the British proposed as the boundary, those were the mountains the tops of which, by the concluded Treaty, are the true boundary to-day, and it is to my mind clear to a demonstration that these were the mountains nearest the sea.

Three days after the Treaty was signed, Count Nesselrode, in advising Count Lieven of the fact, says it would have been more just if, without any occasion possibly arising for application of the 10-leagne limitation, the boundary-line had all along its length followed the natural frontier formed by „les montagnes qui bordent la côte."

Ten days later, in writing again to Count Lieven on the subject, he directs him to make this observation to Mr. Canning, then describing the boundary Russia would have preferred to have taken throughout as „la crête des montagnes qui suivent les sinuosités de la côte."

I am therefore of opinion that, upon the true interpretation of this Treaty, the mountains which constitute the boundary are those which skirt the coast, the more prominent peaks among which have been pointed out in the British Case and in the argument of Counsel before us.

Finally, I have merely to say this further, that the course the majority of this Tribunal has decided to take in regard to the islands at the entrance of Portland Channel is, in my humble judgment, so opposed to the plain requirements of justice, and so absolutely irreconcilable with any disposition of that branch of this case upon principles of a judicial character, that I respectfully decline to affix my signature to their Award.

(Signed) *A. B. Aylesworth.*

London, October 17, 1903.

Opinion of Sir Louis Jetté.

By a majority of four the Alaska Boundary Tribunal has eome to a decision on the questions upon which it had to pass judgment in accordance with the provisions of the Treaty signed between Great Britain and the United States on the 24th January, 1903.

My honourable colleague, Mr. Aylesworth, and myself, have been unable to concur in most of the majority, and, although the Treaty does not call for any expression of opinion by those who differ, I feel it my duty to place on record, as briefly as I can, a few of the reasons by which I have been guided in arriving at conclusions different from those adopted by the other members of the Commission.

I have no intention of writing exhaustively on the different questions submitted to the Tribunal, as it would be more than useless at this moment. I will therefore refrain from any comment which could only be a repetition of the able argument advanced by the distinguished Counsel in the Case, and I will confine myself to a short and concise statement of the views which I firmly believe shnuld have been accepted by the Tribunal.

The first Article of the Treaty of 1903 gives the following directions to the members of the Commission:

„The Tribunal shall consist of six impartial jurists of repute, who shall consider judicially the questions submitted to them, each of whom shall first subscribe an oath that he will impartially consider the arguments and evidence presented to the Tribunal, and will decide thereupon according to his true judgment."

Thus, the character of the functions which had been confided to us is clearly defined. We have not been intrusted with the power of making a new Treaty, and it was not in our province to make concessions for the sake of an agreement; we had simply to give a judicial interpretation of the Articles of that Treaty which were submitted to us. And this position, as I take it, was rendered still more clear by the fact that, if a majority could not be found to agree, no harm was done, the way being then still left open for the Governments of both countries to do what would, unquestionably, be in their power, that is, to settle the difficulty by mutual concessions if they found it advantageous to eaah other.

Finding, thus, that the line of demarcation between our duties and our powers had been very clearly defined, I took it to be my first duty, in passing on the different questions submitted to us, not to assume any more power than had been given to me by this Ist Article of the Convention of 1903.

Article III of this Treaty of 1903 then provides:

„It is agreed by the High Contracting Parties that the Tribunal shall consider, in the settlement of the question submitted to its decision, the Treaties respectively concluded between His Britannic Majesty and the Emperor of All the Russias, under date of the 28th February (16th March), A.D. 1825, and between the United States of America and the Emperor

of All the Russias, concluded under date of the 30th March (18th April), A.D. 1857, and particularly the Articles III, IV, and V of the first-mentioned Treaty, which in the original text are word for word as follows:

„III. La ligne de démarcation entre les possessions des Hautes Parties Contractantes sur la côte du continent et les îles de l'Amérique Nord-ouest, sera tracée ainsi qu'il suit:

„A partir du point le plus méridional de l'île dite Prince of Wales, lequel point se trouve sous le parallèle du 54° 40′ de latitude nord, et entre le 131e et le 133e degré de longitude ouest (méridien de Greenwich) la dite ligne remontera au nord le long de la passe dite Portland Channel, jusqu'au point de la terre ferme où elle atteint le 56e degré de latitude nord; de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte, jusqu'au point d'intersection du 141e degré de longitude ouest (même méridien); et, finalement, du dit point d'intersection, la même ligne méridienne du 141e degré formera, dans son prolongement jusqu'à la Mer Glaciale, la limite entre les possessions Russes et Britanniques sur le continent de l'Amérique Nord-ouest.

„IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l'Article précédent

„1. Que l'île dite Prince of Wales appartiendra tout entière à la Russie.

„2. Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte depuis le 56e degré de latitude nord au point d'intersection du 141e degré de longitude ouest, se trouverait à la distance de plus de 10 lieues marines de l'océan, la limite entre les possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie sera formée par une ligne parallèle aux sinuosités de la côte, et qui ne pourra jamais en être éloignée que de 10 lieues marines.

„V. Il est convenu, en outre, que nul établissement ne sera formé par une des deux Parties dans les limites que les deux Articles précédents assignent aux possessions de l'autre. En conséquence, les sujets Britanniques ne formeront aucun établissement soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des possessions Russes, telles qu'elles sont désignées dans les deux Articles précédents; et, de même, nul établissement ne sera formé par des sujets Russes au delà des dites limites.“

The Treaty then further provides:

„The Tribunal shall also take into consideration any action of the several Governments or of their respective Representatives, preliminary or subsequent to the conclusion of said Treaties, so far as the same tends to show the original and effective understanding of the Parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of said Treaties.

Article IV.

„Referring to Articles III, IV, and V of the said Treaty of 1825, the said Tribunal shall answer and decide the following questions:

„1. What is intended as the point of commencement of the line?

„2. What channel is the Portland Channel?

„3. What course should the line take from the point of commencement to the entrance to Portland Channel?

„4. To what point on the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points?

„5. In extending the line of demarcation northward from said point on the parallel on the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the Russian and the British territory should be formed by a line parallel to the sinuosities of the coast and distant thereform not more than 10 marine leagues, was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

„6. If the foregoing question should be answered in the negative, and in the event of the summit of such montains proving to be in places more than 10 marine leagues from the coast, should the width of the lisière which was to belong to Russia be measured (1) from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said Convention that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the lisière was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the ocean, from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets?

„7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary?"

The Treaty then provides for the meetings of the Tribunal and the rendering of the Award in the following terms:

Article V.

„The Tribunal shall assemble, for their first meeting, at London as soon as practicable after receiving their commissions, and shall themselves fix the times and places of all subsequent meetings.

„The decision of the Tribunal shall be made as soon as possible after the conclusion of the Arguments in the Case, and within three months thereafter. . . . . The decision shall be made in writing, and dated, and

shall be signed by the members of the Tribunal assenting to the same. It shall be signed in duplicate, one copy whereof shall be given to the United States of America for his Government, and the other to the Agent of His Britannic Majesty for his Government.

Article VI.

„Should there be, unfortunately, a failure by a majority of the Tribunal to agree upon any of the points submitted for their decision, it shall be their duty to so report in writing to the respective Governments through their respective Agents. Should there be an agreement by a majority upon a part of the questions submitted, it shall be their duty to sign and report their decision upon the points of such agreement in the manner hereinbefore prescribed."

As I have already said, these two last Articles do not provide for any expression of opinion by those members of the Tribunal who have the misfortune to find themselves in the minority.

The questions to be answered by the Tribunal are seven in number. I will now take them in the order of the Treaty:

1st Question.

„What is intended as the point of commencement of the line?"

The answer to this question is as follows:

„The Tribunal unanimously agrees that the point of commencement of the line is Cape Muzon."

The Representatives of both Governments having agreed to accept Cape Muzon as the southernmost point of Prince of Wales Island, and to take it as the point of commencement of the line, nothing further need be said on this first question.

2nd Question.

„Wat channel is the Portland Channel?"

The following is the answer of the Commission to this question:

„The Tribunal unanimously agrees that the Portland Channel is the channel which runs from about 55° 56′ north latitude, and passes to the north of Pearse and Wales Islands.

„A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner decides that the Portland Channel after passing to the north of Wales Island is the channel between Wales Island and Sitklan Island called Tongass Channel.

„The Portland Channel above mentioned is marked throughout its length by a dotted red line from the point marked B to the point marked C on the map, signed in duplicate by the members of the Tribunal at the time of signing their decision."

The contention of the United States on this point was that Portland Channel is that body of water wich goes seaward between Pearse Island and the peninsula, passes Ramsden Point in (or at the entrance of) Obser-

vatory Inlet, and reaches the ocean by the channel between Pearse and Wales Islands on the west and the easterly continental shore, entering the ocean between Point Wales on the west and point Maskelyne on the east.

The contention of Great Britain was, that it is the channel which enters the ocean between Tongass Island and Kannaghunut Island, leaving Sitklan, Wales and Pearse Islands on the south and east, and extending notherly 82 miles to its head.

The difference between the two contentions will be rendered more striking by saying that the British Portland Channel would run straight from its head to the ocean, whilst the American Portland Channel would divide in two passages at the head of Pearse Island, and there leaving its northern branch would make a curve, and, entering Observatory Inlet, would run down to the sea through that inlet, at the south of Pearse and Wales Islands.

The contention of Great Britain is, to my mind, clearly supported by Vancouver's narrative of his voyage of 1794, when, after relating his movements in these waters, day by day, and specially from the 27th July to the 2nd August, he says:

„In the morning of the 2nd (August) we set out early, and passed through a labyrinth of small islets and rocks, along the continental shore; this, taking now a winding course to the south-west and west, showed the south-eastern side of the canal to be much broken, through which was a passage leading S.S.E. towards the ocean. We passed this in the hope of finding a more northern and westerly communication, in which we were not disappointed, as the channel we were then pursuing was soon found to communicate also with the sea, making the land to the south of us one or more islands. From the north-west point of this land, situated in latitude 54° 45½′, longitude 229° 28′, the Pacific was evidently seen between N. 88 W. and S. 81 W.“

Adding finally (under date 15th August):

„In the forenoon we reached that arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2nd of this month. The distance from its entrance to its source is about 70 miles, which, in honour of the noble family of Bentinck, I named Portland Canal.“

When this second question was put to the Commissioners, at the time of rendering the Award, every one of them, as will appear by the official Report, answered that Portland Channel was the channel that passed — contrary to the American contention — to the north of Pearse and Wales Islands.

But on a sub-question being put, the majority of the Commission decided that after passing north of Pearse and Wales Islands, it should pass south of Sitklan and Kannaghunut Islands, which lie directly to the westward of Pearse and Wales Islands; should make a curve there, and, abandoning its northern course, should reach the sea through Tongass

Passage instead of following the continuous straight line which, a moment before, had been found to be the proper one.

I voted against this sub-proposition, because I found that it was totally unsupported either by argument or authority, and was, moreover, illogical. The Commission had, just a moment before, decided — and very properly, I believe — that Portland Channel, as described by Vancouver, was that channel indicated on all the maps as runing straight to the sea; it had refused to accept the contention of the United States to have it leave its northern course, and, making a curve at Pearse Island, to run through Observatory Inlet, and all at once it is decided that this very channel shall make a curve lower down, that it will now leave its straight northern course and run into the sea through Tongass Passage.

I can only say that if this decision is a correct and just one, I am very much afraid that the majority of the Commission has committed an injustice towards the United States in refusing to admit its contention that the channel ought to make that curve a little higher up, at the head of Pearse Island, which solution would appear, to any one having studied the map, a much more sensible and reasonable one than that wich has been adopted.

The result of this last decision, on the sub-question above mentioned, is to deprive Canada of the two islands which lie at the very entrance of Portland Channel, Sitklan, and Kannaghunut Islands. It will strike the eye of everyone who looks at the map that the position of those two islands, at the entrance of the channel, is a most important one from a military point of view, and that the loss of them to Canada may be felt seriously in the future.

3rd Question.

„What course should the line take from the point of commencement to the entrance to Portland Channel?"

The answer of the majority of the Tribunal to this question is as follows:

„A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Roor, Mr. Lodge, and Mr. Turner decide that the course of the line from the point of commencement to the entrance of Portland Channel is the line marked A B in red on the aforesaid map."

The line indicated in this answer is a direct line from Cape Muzon to the south entrance of Tongass Passage.

This being in opposition to the language of the Treaty, which is: „Commencing from the southernmost point of the island called Prince of Wales Island, ... the said line shall ascend to the north along the channel called Portland Channel;" I feel bound to differ from the decision of the majority. Tongass Passage, as I have stated, on the previous question, is not Portland Channel, and the Treaty says that the line shall be drawn along Portland Channel, but does not say that it can be drawn along Tongass Passage.

4th Question.

„To what point of the 55th parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points?"

This has been answered as follows:

„A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner decides that the point to which the line is to be drawn from the head of Portland Channel is the point on the 56th parallel of latitude marked D on the aforesaid map, and the course which the line should follow is drawn from C to D on the aforesaid map."

The decision on this point is not of great importance, as it affects only a few miles of territory. I must say, however, that it is not in accordance with the rule given by the Treaty, which requires that, from this point, the 56th degree of north latitude, „the line of the demarcation shall follow the summit of the mountains situated parallel to the coast, ... and that whenever the summit of such mountains . . . . shall prove to be at a distance of more than 10 marine leagues from the ocean, the limit shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom."

But, as I have just said, the territory affected by this decision is not of great importance, and the rule adopted by the majority on this point will, I may add, be examined further on, when dealing with Question 7.

5th Question.

„In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the coast of the mountains situated parallel to the coast, until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?"

The answer to this question, in the Award rendered by the majority, is in the following terms:

„A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner decide that the answer to the above question is in the affirmative."

The contention of the United States on this point is therefore acccepted as well founded. It follows from this decision that the strip of territory granted to Russia by the Treaty runs around all the openings of the coast, specially Lynn Canal, and thus deprives British possessions of any access to the sea on the whole length of the said lisière.

This Treaty of 1825 was signed between England and Russia after very protracted negotiations, which took place during a period extending from November 1821 to February 1825. At the end of a considerable amount of communication and diplomatic correspondence the parties had come to an understanding, and agreed on the terms of a Convention apparently satisfactory to both, and which seemed to contain, if not what each would have liked to have obtained, at least what they had mutually conceded to each other.

It will be useful here to recall briefly the circumstances which led the Governments of Great Britain and Russia to sign this Treaty, and to go back to the negotiations which preceded it, in order to have a fair understanding of its importance and bearing.

The Emperor of Russia, Paul the first, following the course adopted by all the Governments of Europe from the beginning of the 17th contury, had, in 1799, granted to an important Company, called the Russian American Company, the monopoly of trade, hunting, and fishing on all the territory claimed by Russia on that part of North America (indicating as the limit the 55th degree of latitude), and also „on the chain of islands extending from Kamschatka to the north, to America, and southward to Japan".

Great Britain, whose possessions on the North American continent extended as far as those of Russia, had granted a similar monopoly to the Hudson's Bay Company, and in their adventurous explorations, advancing more and more every year in the unknown regions of this vast continent, the trappers of this Company and of the North-west Company had at last met with the agents of the Russian American Company.

Hence there soon arose the necessity of determining the limit of both Empires' territory on this continent.

But another reason also necessitated the attention and action of the Government of Great Britain in this instance.

Emperor Alexander the First, wishing to grant additional favour to the Russian American Company, had published, in 1821, by a Ukase bearing date the 4th September, a regulation prohibiting all foreign vessels from approaching the coasts of this part of the Russian territory within less than 100 Italian miles.

The two great maritime nations, Great Britain and the United States, could not acquiesce in a prohibition so completely antagonistic so the rules of international law and to the interests of commerce. Consequently, representations were made to the Russian Government.

In the course of the negotiations which followed, the question of maritime supremacy over a distance of 100 Italian miles was soon settled,

as stated in a despatch of Mr. George Canning to Sir Charles Bagot, bearing date the 15th January, 1824. Mr. Canning clearly and concisely analyses the situation in the following terms:

„The questions at issue between Great Britain and Russia are short and simple.

„The Russian Ukase contains two objectionable pretensions: first, an extravagant assumption of maritime supremacy; second, an unwarranted claim of territorial dominion.

„As to the first, the disavowal of Russia is, in substance, alle we could desire."

The only thing remaining to be settled, therefore, was the question of the frontier.

Russian establishments at that date were more especially on the islands, and Count Nesselrode acknowledges that on the continent they had none below the 57th degree of latitude. These establishments were therefore the ones whose protection was specially desired and intended, and we will now see that it was in that spirit that the negotiations, which were to end in this Treaty of 1825, were begun and continued.

In order to indicate the true character of these negotiations, a few quotations will be sufficient.

In a despatch dated the 3rd November, 1823, and addressed to Count Nesselrode, M. de Poletica, giving the account of an interview he had had with Sir Charles Bagot, His Britannic Majesty's Ambassador to St. Petersburgh, says:

„In the midst of this argument the British Ambassador suddenly suspended the discussion in order to tell me that his Government had, after all, no intention of discussing the territorial question according to the abstract principles of public law or of international law; that would have the effect of rendering the discussion interminable; that the Cabinet of London expected a more satisfactory result for the two parties interested, from an amicable arrangement which would be based only upon mutual consent, and that his instructions had been drawn up in that spirit.

„I replied to Sir Charles Bagot that in the matter in question, so far as I could foresee the views of the Imperial Government, I believed that I could take upon myself boldly to assure him that they were in perfect agreement with those of the Cabinet of London."

The position of both parties is therefore clearly defined by these very plain and very full declarations.

Let us see now what were the claims of Russia as to this strip of territory, which is the subject of the present difficulty.

As I have already said, Russian establishments at that time were more especially situated on the islands, and the Russian Plenipotentiaries openly declare that it is for the protection of those establishments that they require this strip of territory on the coast of the mainland, coming so far down toward the south, when the principal line of separation

between the possessions of the two Empires on this continent was, however, to be placed much higher up.

So we find in the counter-proposition offered by Russia, in answer to a draft of Convention submitted by Sir Charles Bagot in March 1824, the following declaration:

„The principal motive which forces Russia to insist upon retaining the sovereignty over the strip of land described previously on the mainland from the Portland Canal as far as the point of intersection of the 60th degree of latitude with the 139th degree of longitude is that, if deprived of this territory, the Russian American Company would be left without any means of supporting the establishments, which would thereby be left without any support, and could not have any strength nur solidity."

A few days later (29th Murch, 1824), in the document containing the final answer to the British proposition, the Russian Plenipotentiaries, affirming their previous claims, also say:

„The Emperor instructs his Plenipotentiaries to declare once again to the Ambassador of England

„That the possession of Prince of Wales Island without a portion of territory on the coast opposite this Island could not be of any use to Russia.

„That any establishment formed on the said island, or on those around it, would, in some manner, be turned by the English establishments of the mainland, and be completely at the mercy of the latter."

On the 5th April following Count Nesselrode, in a despatch to Couut Lieven, Russian Ambassador to London, says:

„In order to avoid intersecting the Prince of Wales Island, which, according to this arrangement, should belong to Russia, we proposed to carry the southern frontier of our domains to the 54th degree 40 minutes of latitude, and to make it strike on the continent the Portland Canal, the mouth of which, on the ocean, lies at the height of Prince of Wales Island, and the head inland between the 55th and 56th degree of latitude.

„This proposition only secured to us a narrow strip on the coast itself, and left to the English establishments all the space required for their increase and extension."

And a little further on he adds:

„As for us, we restrict our demands to a small strip (lisière) of coast on the continent, and in order to dispel all objections whatsoever, we guarantee the free navigation of the rivers, we proclaim the opening of the Port of Novo-Archangelsk."

One month later, Count Nesselrode in another despatch to Count Lieven again says:

„If the principle of reciprocal convenience is advocated, Russia gives up for the progressive extension of the English establishments a vast extent of coast and of territory: she guarantees free markets; she makes provision for the interests of their trade, and, as a compensation for so many offers inspired by the sincerest spirit of conciliation, she reserves for herself only

a point of support, without which it would not be possible for her to keep one half of her dominions."

It is unnecessary to muliply these quotations.

Let us see now how — after comming to such an understanding — the final Convention was drafted.

A number of drafts and counter-drafts were exchanged between the Representatives of the two Governments, and it is interesting to note the successive changes made in the wording of those documents as to the strip of territory claimed by Russia.

In the draft of Agreement sent by Mr. George Canning to Sir Charles Bagot on the 12th July 1824, it is stated, in Article II, that the line „shall be carried along the coast in a direction parallel to its windings, and at or within the seaward base of the mountains by which it is bounded."

Mr. Canning, in his letter inclosing this draft, uses the following expressions: „thence following the sinuosities of the coast, along the base of the mountains nearest to the sea".

Article III of this draft then mentioned a width — to be determined upon — which this strip of land could not exceed.

This proposal was not accepted, and Count Nesselrode sent to Count Lieven a counter-draft, the terms of which, with regard to the lisière, he himself analyzes in the following terms: „Our counter-draft carries our boundary from the 51st degree of north latitude to 54° 40′. It leaves the establishments which the English Companies may form hereafter on the north-west coast all the territory situated to the south of Portland Channel. It abolishes the establishment of the mountains as the boundary of the strip of mainland which Russia would possess on the American continent, and limits the width of this strip to 10 marine leagues, in accordance with the wishes of England".

In a letter addressed to Mr. Stratford Canning, dated the 8th December 1824, Mr. George Canning replied to Count Nesselrode's proposal as follows:

The Russian Plenipotentiaries propose to withdraw entirely the limit of the lisière on the coast which they were themselves the first to propose, viz., the summit of the mountains which run parallel to the coast, and which appear, according to the map, to follow all its sinuosities, and to substitute generally that which we only suggested as a corrective of their first proposition.

We cannot agree to this change. It is quite obvious the boundary of mountains, where they exist, is the most natural and effectual boundary. The inconvenience against which we wished to guard was that which you know to have existed on the other side of the American continent, when mountains laid down in a map as in a certain given position, and assumed, in faith of the accuracy of the map, as a boundary between the possessions of England and the United States, turned out to be quite differently situated, a discovery which has given rise to the most per-

plexing discussions. Should the maps be no more accurate as to the western than as to the eastern mountains, we might be assigning to Russia immense tracts of inland territory, where we only intended to give, and she only intended to ask, a strip of the sea coast.

„Where the mountains are the boundary, we are content to take the summit instead of the seaward base as the line of demarcation."

Article III of the draft of Treaty sent with this letter by Mr. George Canning to Mr. Stratford Canning, says: „Provided, nevertheless, that if the summit of the aforesaid mountains shall turn out to be, in any part of their range, at more than the distance of 10 marine leagues from the Pacifick, then that, for that space, the line of demarcation shall be a line of parallel to the coast and its windings," &c.

This draft having been submitted to M. Matusevich—an official of the Russian Office, and afterwards Ambassador Extraordinary—was slightly changed. Thus, in Article IV, instead of maintaining the expression „the Pacifick," he says: „That whereever the distance between the crest of the mountains and the sea shall be more than 10 marine leagues, the boundary of this same strip shall be formed by a line parallel to the sinuosities of the coast, and which shall nowhere be more than 10 marine leagues from the sea."

Was it M. Matusevich's intention, in substituting this word sea, to the word Pacifick which had been used by Mr. Canning, to weaken the force and bearing of the expression chosen by him? It is impossible to know; but one thing is certain, however, and it is that if such was his intention it was not realized, the Treaty in its definite from using the ward „ocean," which in this instance, is the equivalent of the expression used by Mr. Canning.

Thus the second paragraph of Article IV of the Treaty of 1825 provides:

„Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte, depuis le 56e degré de latitude nord au point d'intersection du 141e degré de longitude ouest, se trouverait à la distance de plus de 10 lieues marines de l'océan, la limite entre les possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie, sera formée par une ligne parallèle aux sinuosités de la côte et qui ni pourra jamais en être éloignée que de 10 lieues marines.

It is a well-known rule in the interpretation of contracts that one of the safest modes of arriving at the true intention of the parties is to take into consideration the circumstances which have led to the settlement, to study the claims which each party pressed upon the other, and to ascertain the end which it would have wished to secure.

Now, if I apply this rule to the Treaty of 1825, it seems to me impossible to arrive at the conclusion that the intention of the parties to this Treaty was that this strip of territory should be traced so as to run up to the source of all the rivers, and to the head of all the inlets, which passed through this strip to reach the sea.

This, however, is the meaning which a majority of the Tribunal has given to this Treaty when by an interpretation of the word coast, which appears to me to be forced and untenable under the circumstances, they are led to say that Lynn Canal is the ocean, and that the coast of the ocean means equally the coast of Lynn Canal!

I cannot accept this interpretation. My humble opinion, after having maturely considered the documents from which I have taken the quotations made above, is that those who prepared and drafted this Treaty of 1825 never contemplated such a result. Consequently, leaving aside the learned distinctions which where pressed upon us as to the meaning of the word coast, to retain only what I believe was the intention of the parties, I still say that even if we were to consider Lynn Canal as an arm of the sea, or even as an inland sea, the coast of Lynn Canal could not, even then, be considered the coast of the ocean!

There is, in my country, one of the largest rivers of the world, and I have often heard it said by some of my compatriots, when contemplating with pride the immense sheet of water at its mouth: „Why, but this is the sea!"

However, it has not yet entered the mind of any one to say: „This is the ocean!"

It has been reserved for Lynn Canal to be raised to that dignity!

6th Question.

„If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast, should the width of the lisière which was to belong to Russia be measured — (1) from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said Convention that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the lisière was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets?"

The majority of the Tribunal declares that:

„Question 5 having been answered in the affirmative, Question 6 requires no answer."

The opinion of the members of the Tribunal on this question, moreover, is made apparent from the views expressed on the other question, and it would be useless to add anything more.

7th Question.

„What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains when within 10 marine leagues from the coast, are declared to form the eastern boundary?"

Answer:

„A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the mountains marked S on the aforesaid map, are the mountains referred to as situated parallel to the coast, where such mountains marked S are situated.

„Between the point marked P (mountain marked S 8,000) on the north and the point marked T (mountain marked S 7,950), in the absence of further survey the evidence is not sufficient to enable the Tribunal to say which are the mountains parallel to the coast within the meaning of the Treaty."

Article III of the Treaty of 1825, after declaring that the line of demarcation shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude, adds:

„From this last-mentioned point the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141st degree of west longitude."

Article IV, § 2, then provides:

„That whenever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.

The contention of the United States, on this point, is stated in the followiug words, on p. 206 of the Case:

„The United States request the Tribunal to answer and decide that such mountains (as mentioned in question 7) do not exist within 10 marine leagues from the coast."

This, however, cannot be said to express correctly what was argued before the Tribunals on this question. It would perhaps be safer to say that the real contention of the United States, on this point, was that in the intention of the negotiators of the Treaty the line was to follow a chain of mountains, and that there being no such chain, the line was to be drawn at a uniform and regular distance of 35 miles from the coast.

It was also suggested, in the argument, that the word crest carries with it the indication of a continuous chain or range of mountains, and that this does not exist within the limit of the 10 leagues.

The British contention was that mountains answering the description of the Treaty do exist.

The evidence on this point clearly establishes the contention of Great Britain.

Mr. King, chief astronomer of the Department of the Interior, at Ottawa, in his Affidavit (p. 307, British Case Appendix), says:

„Troughout its entire length, from the 56th parallel to Lynn Canal, the coast is bordered by mountains 3,000 to 5,000 feet in height, having rocky peacks and ridges. Their summits average 5 or 6 miles in distance from the sea, and in many places they approach even nearer. These mountains preserve for considerable distances much uniformity of height, and also of direction, forming elongated mountain masses lying with their lengths parallel to the general line of the coast. Penetrating inlets and valleys separate these mountain masses from one another, but without greatly disturbing their continuity of direction."

And on p. 308:

„Hence a line following mountain summits parallel to the general line of the mainland is possible, subject only to the breaks caused by inlets and river valleys, which breaks are comparatively short compared with the lengths of the continuous lines of the mountain summits."

The decision of the Tribunal, on this point, is adverse to the contention of the United States; it acknowledges that the Treaty does not call for a continuous chain of mountains, and that those mountains which exist along the coast, answer the requirements of the Treaty for the tracing of the line-frontier.

I entirely concur in the foregoing part of the decision of the Tribunal on this question, but I stop there, and cannot follow the majority in the adoption of its system for the demarcation of the line.

The Treaty of 1825 clearly indicates, in my opinion, that the mountains which were to constitute the boundary-line, were those nearest to the coast. In fact, when the Treaty says: „the summit of the mountains situate parallel to the coast," it evidently points to the mountains on the coast, those which are situated on the border of the coast, and if we were to suppose two chains of mountains, one parallel to the other, the one which would lie the farthest from the coast would not be situated parallel to the coast, but it would be situated parallel to the other chain of mountains. Therefore, the first range of mountains, the one nearest to the coast, is the one which is alone indicated by the Treaty. This, to me, seems unanswerable.

But a few quotations from the opinions of those who have negotiated this Treaty, will render the point still more evident.

Mr. George Canning, in a despatch to Sir Charles Bagot, dated the 12th July, 1824, says:

„His Majesty's Government have resolved to authorize your Excellency to consent to include the south points of Prince of Wales Island within the Russian frontiers, and to take as the line of demarcation a line drawn from the southernmost point of Prince of Wales Island from south to north through Portland Channel, till it strikes the mainland in latitude 56, thence following the sinuosities of the coast, along the base of the mountains nearest the sea to Mount Elias : . . . ."

Count Lieven, in a Memorandum which he prepared on the Northwest Coast Convention (24th July, 1824), says:

„In the case now under consideration, the word base, by the indefinite meaning which it presents, and the greater or less extension which can be given to it, would appear hardly suitable to secure the delimitation against subsequent disputes, for it would not be impossible, in view of the little exactness of the geographical ideas which we as yet possess as to these regions, that the mountains designated as the boundary should extend, by an insensible slope, down to the very border of the coast."

In his despatch to Count Lieven, bearing date the 20th February, 1825, Count Nesselrode again mentions „the natural frontier formed by the mountains bordering on the coast."

There is, therefore, no doubt in my mind that the mountains indicated by the Treaty are those situated nearest to the coast.

Nevertheless, instead of following the evident meaning of the Treaty, the majority of the Tribunal has adopted a line which, at a number of points of its course, rests on mountains which lie far from the coast, and are separated from it by nearer ones, which ought consequently to have been chosen in their stead, as the points of demarcation of the line.

I found it impossible, under such circumstances, to concur in this arbitrary determination of a line which, although it does not concede all the territory they claimed to the United States, nevertheless deprives Canada of the greater part of that to which she was entitled.

October 22, 1903.

(Signed) *L. A. Jetté.*

Opinion of the United States' members of the Tribunal (1).

Opinion on Second Question.

Question number two of the Convention, „What is the Portland Channel?" has presented such peculiar difficulties that the Undersigned feel it necessary to set forth the reasons which have led them to join in the decision rendered by a majority of the Tribunal.

An inlet of great depth, starting just below the 56th parallel, runs down to the head of Pearse Island. At this point the inlet divides, and down to this point of division there is no question of identity, and none has ever been seriously raised. From the north-eastern corner of Pearse Island to within five miles of the 56th parallel the indentity of this inlet with the Portland Channel, as intended by the negotiators of the Treaty of 1825, is undisputed, but after the division at Pearse Island the question has arisen whether the channel south of Pearse and Wales Islands is the Portland Channel, or whether that which passes to the north of those two islands is entitled to the name. Were we able to rest a decision solely on maps which we know to have been before the negotiators of the Treaty of 1825, the weight of evidence in the opinion of the Undersigned would be in favour of the view that the Portland Channel passed south of Wales and Pearse Islands, with Observatory Inlet entering it on the

other side, and so on to the sea. The northern channel as indicated on contemporary maps is narrow and indistinct, so that it is not easy to believe that any negotiators would have taken it as a clear, well-defined, natural boundary, such as they were seeking to establish in the Treaty of Delimitation. The testimony of maps subsequent to the Treaty is fluctuating, but general opinion seems to have settled down to the belief that the more obvious southern channel was a countinuation and part of the Portland channel, and on many of the later maps we find the channel passing south of Pearse and Wales Islands denominated „Portland Inlet." In determining, however, what should now be called Portland Channel, the question to be decided was what the negotiators meant when they used that term, and in ariving at the intention of the negotiators of the Treaty of 1725, it was not possible to reach it by an inspection of the maps alone. The negotiators undoubtedly intended when they named Portland Channel as the southern boundary of the Russian possesions to refer to that inlet or body of water which Vancouver named Portland Canal, for it was Vancouver who gave the name, as is well known, to this inlet. If Vancouver had left as nothing but maps the Case, although not free from doubt and obscurity, would be comparatively simple. But Vancouver also published in addition to his maps a detailed narrative of all his explorations upon the north-western coast of America,

It was argued very forcibly by the Counsel for the United States that there was no proof that the negotiators had read Vancouver's narrative, but while it is no doubt true that they made no such examination of that narrative as has lately been pursued, it is almost impossible to suppose that men of trained ability seeking to establish a natural boundary in a little-known region should not have read the only book which contained any detailed information as to that portion of the globe with which they were dealing. We know from undoubted evidence that Mr. Pelly, the representative of the Hudson Bay Company, who was consulted by Mr. Canning at every stage of the negotiations, had read Vancouver's narrative, or, at least, those portions relating to the part of the coast which was under discussion. It is almost incredible, therefore, that Mr. Canning and Sir Charles Bagot should not also have examined the narrative, and it is equally unlikely that the Russians should have failed to consult the one book which contained a detailed examination of that region, and which had appeard in no less than four editions, two in English and two in French.

It has seemed, therefore, to the Undersigned impossible to exclude the narrative in endeavouring to each a conclusion as to what the negotiators meant by the Portland Channel. In 1888 Mr. Dall, of the Smithsonian Institution, in a Memorandum sent to Mr. Bayard, said (pp. 104 and 105, United States' Counter-Case):

„At this point we come across another difficulty, or, rather, one has been suggested very recently. By a careful study of Vancouver's text it is evident that there is on this point a certain discrepancy between his

charts and his text. In reading over his whole account of the survey of this inlet and its branches (Vancouver, official English edition, vol. ii, pp. 329, 330, 331, 334—340, and 371), he seems to have varied a little in his notions, but his final treatment of Observatory Inlet extends it to Points Wales and Maskelyne, while in another place he seems to regard it as beginning at Point Ramsden (cf. op. cit. 2, p. 375). On the other hand, he treats Portland Inlet as continuing to the sea behind Wales and Pearse Islands. So that, if the Treaty is to be tried by Vancouver's text, it will result in giving to Great Britain the above-mentioned islands and some other small ones."

Mr. Dall there points out for the first time the discrepancy which appeared to exist between the maps and the text of the narrative, or, perhaps, to state it more exactly, the discrepancy between the text and what appeared to be the obvious, though not necessarily the only, meaning of the maps. There is no need here to enter into all the details of Vancouver's narrative, but on page 379 of his narrative he says, under the date of Monday, the 19th August, 1793:

„A want of wind and a flood tide prevented our weighing until nine the following morning, when with an ebb tide we again proceeded, but did not reach the entrance to Observatory Inlet until two of the morning of the 20th, a distance of not more than thirteen leagues frem Salmon Cove. The western point of Observatory Inlet I distinguished by calling it Point Wales."

That is, he called that stretch of water from Salmon Cove, on Observatory Inlet, where his ships had been anchored, to the south-western extremity of Wales Island, a distance of 13 leagues, „Observatory Inlet." This includes, as a glance at the map will show, the channel which passes south of Pearse and Wales Islands. If, therefore, he intended to name that whole stretch of water Observatory Inlet, it is exclusive, and the name of Portland Canal can not be applied to it. Portland Canal, therefore, must either have stopped at the north-eastern extremity of Pearse Island or must have continued by the channel north of that island to the eastern end of Wales Island.

The question is a very close one, but if we admit the text of the narrative it seems difficult to avoid the conclusion that by „Observatory Inlet" he included all the water from Salmon Cove to the south-western extremity of Wales Island. We also know that he explored the northern channel, occupying himself in that work from the 27th July to the 2nd August. He followed the channel westerly, passing what has been known as Tongass Passage, between Wales and Sitklan Islands, through which he looked and saw at a short distance the ocean. Desiring, however, to find, if possible, another opening to the ocean which followed the general line of the Continent, he kept on through the narrow passage which passes north of Sitklan and Kannaghunut Islands, and came out into the ocean opposite Cape Fox. Near Cape Fox he encamped. He then explored the waters around Revilla Gigedo Island, and on the 14th August returned to Cape

Fox. At dawn the next morning, which in that latitude and in August must have been at a very early hour, he set out to return to his vessels, and he writes that in the forenoon, which must have been some hours after he started from the point opposite the narrow channel out of which he had issued the 2nd August, he passed the mouth of the channel which he had previously explored, and which he named „Portland's Canal, in honour of the noble family of Bentinck."

His exact language is as follows:

„In the forenoon we reached that arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2nd of this month. The distance from its entrance to its source is about 70 miles, which, in honour of the noble family of Bentinck, I named „Portland's Canal" (pp. 370—71, Vancouver).

It seems clear from this statement that if he considered, as the other extracts from his narrative already cited seem to prove, the northerly channel as the natural extension of the deep inlet running to the 56th parallel, he must have looked into it through Tongass Passage, and then and there gave it its name. Moreover, it is quite obvious from the maps that there are three outlets for the waters which come through the northern channel and are swelled by those from the inlets about Fillmore Island. Two of them are very small, so small as to be practically impossible to navigate. The third is the Tongass Passage, and that seems beyond a question, on the face of both the maps and the text, to be the true entrance to the channel which passes north of Wales and Pearse Islands. Accepting Vancouver's narrative as having the greatest weight, the conclusion follows that the award of the Tribunal must be that the Portland Channel intended by the makers of the Treaty of 1825 was that body of water which entered the sea by the Tongass Passage and passed thence north of Wales and Pearse Islands, and so onward to the immediate neighbourhood of the 56th parallel.

(Signed) *Elihu Root.*
Henry Cabot Lodge.
October 20, 1903. *George Turner.*

Opinion of the United States Members of the Tribunal (2).

Opinion on Fifth Question.

The following statement presents in brief the chief consideratiens which have led the Undersigned Members of the Alaskan Boundary Tribunal to the conclusion that the Fifth Question submitted under the Treaty of the 24th January, 1903, should be answered in the affirmative.

The question calls for a construction of the Treaty between Great Britain and Russia signed the 16th (28th) February, 1825, agreeing upon a boundary-line between Alaska and British Columbia. The particular provisions which undertake to describe the boundary-line are in these words:

„III. The line of demarcation between the possessions of the High Contracting Parties, upon the coast of the continent, and the islands of America to the north-west, shall be drawn in the manner following:

„Commencing from the southernmost point of the island Prince of Wales island, which point lies in the parallel of 54° 40′ north latitude, and between the 131st and the 133rd degrees of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains (‚la crête des montagnes‘) situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and, finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British possessions on the continent of America to the north-west.

„IV. With reference to the line of demarcation laid down in the preceding Article, it is understood:

„First. That the island called Prince of Wales Island schall belong wholly to Russia.

„Second. That whenever the summit of the mountains (‚la crête des montagnes‘) which extend a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned shall be formed by a line parallell to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.“

Portland Channel begins on the full ocean, at a point very near latitude 54° 40′, and ascends for about 70 miles, in a general direction slightly east of north, to a point which is, in fact, about 5 miles from the 56th parallel.

The Fourth Question relates to the course of the line through this intervening space.

The Tribunal has agreed that as the intervening distance it not more than would naturally be covered in climbing from the sea level to the summit of the high mountains which where known in 1825 to exist, and which do in fact exist, at the head of the Portland Channel, the simple and obvious way to give effect to the intent of the Treaty is to take the shortest route from the water to the summit of the mountain, which is in plain sight from the water; and this course brings us to the 56th parallel, upon a mountain ridge over 5,000 feet in height, the foot of which is washed by the waters of the Portland Channel.

The Fifth Question relates to the course of the line northward from that point. It is in the following words:

„In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and Russian territory should be formed by a line parallel to the sinuosities of the coast, and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?"

The main practical effect of the answer will be to determine whether the line was to run around the heads of the inlets, leaving them in Russian territory, or was to cut across the inlets, leaving their heads in British territory.

We are of the opinion that the true construction of the Treaty is that which carries the line around the heads of the inlets, and that the following considerations all require the adoption of this construction:

1. The purpose of the Treaty, well understood by the negotiators, would be accomplished by this construction, and would be defeated by the other construction.

2. The natural and ordinary meaning of the terms used in the Treaty, when applied to the natural features of the country known to the negotiators, or supposed by them to exist, requires this construction.

3. The meaning expressly given to the words used in the Treaty by the negotiators, in their written communications during the course of the negotiations, requires this construction.

4. The official maps published by Russia, Great Britain, Canada, British Columbia, and the United States — many in number — for a period of more than sixty years after the Treaty, known to the public officers of the different Governments, and accepted as the basis of official action, without a single exception carried the line around the heads of all the inlets, and were wholly irreconcilable with the other construction.

During all that period the cartographers of England, France, Germany, Russia, Spain, the United States, and Canada were permitted to represent the line in the same way, without any question or suggestion to the contrary, so that it was permitted to become part of the common understanding of mankind that the region now in dispute was Russian and not British territory. And the United States were permitted to purchase the territory, forty-two years after the Treaty, with this understanding.

These things show a practical interpretation of the Treaty.

5. For more than sixty years after the Treaty, Russia, and in succession to her the United States, occupied, possessed, and governed the territory around the heads of the inlets without any protest or objection, while Great Britain never exercised the rights or performed the duties of sovereignty there, or attempted to do so, or suggested that she considered herself entitled to do so.

This was a practical interpretation of the Treaty by all parties concerned.

The purpose of the Treaty is not open to doubt and was, in substance, conceded upon the arguments before the Tribunal.

Both Russia and Great Britain had chartered great fur-trading Companies. On the one hand, the Russian-American Company had extended its establishments from the west up the chain of Aleutian Islands, and down the north-west coast of America as far as the 57th parallel, where it had a post at New Archangel, or Sitka, on Baranof Island. On the other hand, the Hudson's Bax Company, crossing the Rocky Mountains from the east, had pushed its posts west to the Mackenzie River and the upper waters of the Fraser River, to within about 100 miles of the coast at about latitude 55^0 or 56^0. It was evident that before very long the agents of these two Companies would meet and dispute the control of the same hunting-grounds and of trade with the same native tribes.

By a Ukase dated the 8th July, 1799, Russia had granted to the Russian-American Company the exclusive right to hunt and trade upon the coast as far south as the 55th parallel; and by a Ukase dated the 4th September, 1821, Russia had undertaken to protect the Russian Company by prohibiting all foreign vessels not only to land on the coasts and islands which were declared to belong to Russia as far south as latitude 51 degrees, but also to approach the coast within less than 100 miles.

Great Britain protested against this assumption of exclusive jurisdiction over the Pacific Ocean, and incidentally to the settlement of that question, the two nations undertook to delimit their respective territorial possessions in that part of the world.

Russia based her claims upon occupation and trade by the Russian-American Company; Great Britain based her claims upon occupation and trade by the Hudson's Bay Company.

Both parties soon agreed to drop the discussion of strict right, and to make such a settlement as should be for their mutual convenience and interest. Proceeding upon this ground, the British negotiators proposed to confine Russia to the continent west of the Lynn Canal, and the islands in the immediate neighbourhood of the post at Sitka. Russia, upon the other hand, insisted that it was necessary for the protection of her trade, of which the post at Sitka was the centre, to have a substantial strip or lisière of territory upon the mainland, opposite the islands, and extending as far south as the Portland Canal. To this contention Great Britain yielded, and the line now under consideration was designed to give to

Russia a strip or lisière on the mainland which would afford to the Russian-American Company the protection desired.

The purpose of the lisière was stated by the Russian negotiators to be „the establishment of a barrier at which would be stopped once for all to the north as to the west of the coast allotted to our American Company the encroachments of the English agents of the amalgamated Hudson Bay and North-west English Company, whom a more intimate acquaintance with the country traversed by the Mackenzie River might easily bring, in the course of time, into the neighbourhood of our establishments.“ (B.C., App., p. 53.)

It is more fully stated in the observations of the Russian Plenipotentiaries upon the proposal of Sir Charles Bagot in February 1824 to assign to Russia a strip with the uniform width of 10 marine leagues from the shore, limited on the south by a line between 30 and 40 miles north from the northern end of the Portland Canal. They then said:

„The motive which caused the adoption of the principle of mutual expediency to be proposed, and the most important advantage of this principle, is to prevent the respective establishments on the north-west coast from injuring each other and entering into collision.

„The English establishments of the Hudson's Bay and North-west Companies have a tendency to advance westward along the 53° and 54° of north latitude.

„The Russian establishments of the American Company have a tendency to descend southward toward the fifty-fifth parallel and beyond, for it should be noted that, if the American Company has not yet made permanent establishments on the mathematical line of the 55th degree, it is nevertheless true that, by vietue of its privilege of 1799, against which privilege no Power has ever protested, it is exploiting the hunting and the fishing in these regions, and that it regularly occupies the islands and the neighbouring coasts during the season, which allows it to send its hunters and fishermen there.

„It was, then, to the mutual advantage of the two Empires to assign just limits to this advance on both sides, which, in time, could not fail to cause most unfortunate complications.

„It was also to their mutual advantage to fix these limits according to natural partitions, which always constitute the most distinct and certain frontiers.

„For these reasons the Plenipotentiaries of Russia have proposed as limits upon the coast of the continent, to the south, Portland Channel, the head of which lies about (‚par‘) the fifty-sixth degree of north latitude, and to the east the chain of mouutains which follows at a very short distance the sinuosities of the coast.“ (U.S.C., App., p. 161.)

The reply of Sir Charles Bagot was that the line proposed by him would secure the advantage desired by Russia. He said:

„Any argument founded on the consideration of practical advantage to Russia could not fail to have the greatest weight, and the Plenipotentiary

of his Britannic Majesty did not hesitate to give up, in consequence of this observation of the Russian Plenipotentiaries, the line of demarcation which he had first proposed . . . and to offer another which would secure to Russia not only a strip on the continent opposite the southernmost establishment which she possesses on the islands, but also the possession of all the islands and waters in its vicinity, or which are situated between that establishment and the mainland (‚terre ferme'), in short, possession of all that could in future be of any service either to its stability or its prosperity." (U.S.C., App., p. 163.)

And he then proposed to include the Prince of Wales Island within the Russian line. But Russia insisted upon having her lisière run to the Portland Canal, saying—

That the possession of Prince of Wales Island, without a slice (portion) of territory upon the coast situated in front of that island, could be of no utility whatever to Russia. That any establishment formed upon said island, or upon the surrounding islands, would find itself, as it were, flanked, (‚tourné') by the English establishments on the mainland, and completely at the mercy of these latter." (U.S.C., App., p. 164.)

England finally yielded to the Russian demand that the lisière should extend to the Portland Canal.

It was thus the intent of the Treaty makers to provide for a strip of Russian territory on the mainland which would protect the trade of the Russian American Company, from its central post at Sitka, against the competition of the Hudson's Bay traders, coming from the east. To ascertain what kind of a barrier was intended to furnish that protection, it is necessary only to inquire what the trade was. It was a trade with the Indian tribes who lived around the heads of the inlets, and the subject-matter of the trade consisted of the skins of the fur-bearing animals taken in and about the inlets and the streams flowing into them. It is quite incredible that for the purpose of protecting that Russian trade against competition of the Hudson's Bay Company the Treaty makers intended to draw a line which would throw all the natives with whom the trade was conducted, and substantially all the territory which produced the material of the trade, into the Hudson's Bay territory. Instead of a protection to Russian trade with the mainland, that would have been a complete abandonment of it. Instead of excluding the Hudson's Bay agents from those parts of the coast which were frequented by the Russian hunters and fishermen it would have excluded the Russians, and given a monopoly to the Hudson's Bay Company. The line proposed by Great Britain cuts across some sixteen bays and inlets, leaving upon the Russian side subtantially nothing but rocky and inaccessible promontories, and on the British side, including substantially all the harbours, anchorages, habitable shores, river mouths, avenues of access to the interior, hunting grounds and native tribes. It is plain that such a strip of territory, part land and part water, would have furnished no protection to Russian trade, would have interposed no barriere to the extension of Hudson's Bay posts as far as, in the nature of things, they

could come, would have completely failed to furnish the natural boundary which both parties intended, and would not, in any respect, have answered the avowed purpose of the lisière intended by the Treaty.

We are not at liberty to ascribe a meaning to the terms of a Treaty which would frustrate the known and proved purpose of the instrument, unless the words used in the instrument are such as to permit no other construction. Whoever asserts a construction which would produce such a result must show not merely that it is a possible construction, but that it is a necessary construction, and that any other is impossible.

The most important and determining question in construing the words of the Treaty is the question: in what sense did the Treaty makers use the words „coast" and „sinuosities of the coast"? The primary boundary provided for in Article III was to be „the crest of the mountains situated parallel to the coast". And, bu Article IV, when that crest proves to be at the distance of more than 10 marine leagues from the ocean, the boundary is to be formed by „a line parallel to the sinuosities of the coast, and which shall never exceed the distance of 10 marine leagues therefrom".

In what sense did the Treaty makers use the word „coast"?

Counsel for Great Britain contend that since the 10-marine-league line measured from the coast was to be applied only when the mountains proved more than 10 marine leagues from the ocean, the words „coast" and „ocean" must be deemed correlative, and the coast intended must be taken to be the line where land and ocean, properly so called, meet; and they say that the word „ocean" cannot be taken to describe the waters of long and narrow inlets, or fiords, like the Lynn Canal aud the Taku Inlet, less than 6 miles in width but must be taken to mean the great body of water which puts a limit to territorial jurisdiction, and they infer that the coast which is coterminous with the ocean must be the line upon one side of which is the mainland, including its territorial waters, and on the other the full ocean, excluding territorial waters. In other words, the general line or trend of the mainland coast, cutting across the mouths of inlets.

It is, however, impossible to give this meaning to the word „ocean," as used in this Treaty, because there streches along the coast for 300 miles—from Cape Spencer down to the Portland Canal, and covering a space from 80 to 100 miles wide—an archipelago of islands, separated from each other and from the mainland by a multitude af narrow and tortuous passages, which do not at all answer to this meaning of the word „ocean." If this were the meaning of the word as used in the Treaty, the coast line would be outside of the islands, and a lin drawn at 10 marine leagues from that coast would give the Russia no territory whatever upon the mainland. It is only by assigning to the word „ocean" an entirely different meaning, and making it include the narrow passages which are no more and no less ocean than the inlets—that the Treaty can be made to provide any lisière upon the mainland. In this sense, which is necessary to effect the purpose of the Treaty, „ocean" means the salt water

that washet the shore of the mainland, and „coast“ means the line where the mainland meets the salt water, however narrow may be the passage, and however distant from the broad expanse of fall ocean.

It is further to be observed that the contention of Great Britain completely ignores the provision that the 10-marine-league line, whenever drawn, is to be parallel to the sinuosities of the coast („parallèle aux sinuosités de la côte“). The general trend of a coast takes no account of sinuositis. The two terms are directly opposed. The meaning of „general trend“ is that sinuosities are irgnored, and the meaning of „following the sinuosities“ is that the general trend is departed from whenever the line where the land and water meet departs from it. Counsel for Great Britain were asked upon the argument to lay down on a map a line from which they contended that the 10 marine leagues were to be measured. The line which they presented took no account whatever of the sinuosities of the coast. According to their contention, precisely the same course was followed that would have been followed if those words had been omitted from the Treaty. We are not at liberty to omit them, or to refuse to give them effect. The only real effect they can have is to carry the line around the bays and inlets.

If we turn to the maps which were before the negotiators, and with reference to which they used the words of the Treaty, and seek to learn their meaning of the word „coast“ by ascertaining what were the mountains which they describe as parallel to the coast, we reach the same result. We know that they had before them, and consulted, Vancouver's chart No. 7 (British Atlas, No. 2); Vancouver's chart No. 12 (British Atlas, No. 3); the Russian Official Map of 1802 (British Atlas, No. 5); Faden's Map of 1823 (British Atlas, No. 10), this last being specially relied upon by the British negotiators. Upon every one of these maps there appears a distinct and well-defined chain or ridge of mountains, running from near the head of the Portland Canal, and northerly along the coast, and in general parallel thereto, and furnishing the means of defining a line of natural boundary as distinctly as the mountain chains which constitute boundaries between countries in other parts of the world, such as the Pyrenees between France and Spain and the Andes between Chile and Peru. These maps embodied the results both of British and of Russian exploration, and they appear to justify the unquestioning confidence of the negotiators in the existence of a mountain crest extending generally parallel to the coast, and capable of defining the proposed boundary line. They clearly present a chain or range, and we know from numerous passages in the written communications which passed during the negotiations that the negotiators on both sides had in mind a chain or range of mountains, when they referred to mountains as defining the boundary. Thus the Russian negotiators described the proposed boundary which they had proposed, and which is the one adopted in the Treaty, as „the chain of mountains which follow, at a very small distance, the windings of the coast,“ and they say that they leave to Great Britain „all the territory situated behind the chain of mountains referred to previously.“ (B.C., App., pp. 71, 72.)

In July 1824, when Mr. Canning proposed that the line should run along the base of the mountains, Count Lieven represented to him „that when a chain of mountains is made to serve for the establishments of any boundary whatever, it is always the crest of those mountains that forms the line of demarcation.“ (B.C., App., pp. 90, 91.)

On the 20th October, 1824, the Hudson's Bay Company, through Mr. Pelly, wrote to the Foreign Office insisting that the eastern boundary from the Portland Canal northerly should be „the chain of mountains at a ‚très petite distance de la côte,‘ but that if the summit of those mountains exceed 10 leagues, the said distanee be substituted instead of the mountains,“ thus accepting and quoting the Russian language above cited. (B.C., App.. p. 110.)

At the time of exchanging the Ratifications of the Treaty, the Russian Representative presented a formal expression of dissatisfaction on the part of Russia at Great Britain's insistence upon the alternative or corrective 10-marine-league line, and Mr. Canning replied that under the Treaty of Ghent, between Great Britain and the United States, „which likewise fixed a chain of mountains as the frontier between the possessions of the two States,“ dispute had arisen because the mountains had been found to devite from the direction given them on the maps, and he wished to avoid such a dispute. (B.C., App. p. 135.)

When Great Britain finally accepted the Portland Canal line, the Russian Ambassador at London wrote to Count Nesselrode at St. Petersburgh as follows:

„The proposition of our Court was to make this frontier run along the mountains which follow the windings of the coast to Mount Elias. The English Government fully accepts this line as it is laid off on the maps (‚désignée sur les cartes‘); but as it thinks that the maps are defective, and that the mountains which are to serve as a frontier might, by leaving the coast beyond the line designated, inclose a considerable extent of territory, it wishes the line claimed by us to be described with more exactness, so as not to cede, in reality, more than our Court asks and more than England is disposed to grant.“ (B.C., App., p. 84.)

There can be no doubt that the chain of mountains depicted upon all of these maps as running northerly from the head of the Portland Channel along the coast to Mount St. Elias was the mountain crest described in the Treaty as running parallel to the coast. There are no other mountains on any of the maps which were before the negotiators which answered to the description of the Treaty and of the written negotiations.

That chain of mountains upon all the maps runs around the heads of all the bays and inlets. It is substantially parallel to those sinuosities, and it is not parallel to a line which cuts across the inlets.

The negotiators have themselves, however, furnished an explanation of their meaning of the word „coast“ which leaves that provison of the Treaty in no possible doubt. The 10-marine-league line was proposed to

the Russian negotiators by Sir Charles Bagot as the measure of the width of the lisière at the time when he proposed to fix its southern boundary a short distance northof the Portland Canal. He proposed it in these words:

„Thence extending in the same direction upon the mainland as far as a point 10 marine leagues distant from the coast. From this point the line would follow a northerly and northwesterly direction, parallel to the sinuosities of the coast, and always at a distance of 10 marine leagues from the shore."

The coast, to the sinuosities of which the line was to be drawn parallel, was thus explained as being equivalent to the shore („rivage"). (B.C., App., p. 71.)

When Mr. Canning was about to assent to the mountain boundary proposed by Russia, the Hudson's Bay Company, which was consulted at every step of the negotiations by Mr. Canning, understood that the proposed line „parallel to the sinuosities of the coast" was equivalent to „parallel to the sinuosities of the shore", for in subsequently advising Mr. Canning upon the Russian proposal, Mr. Pelly says that „those mountains represented in the charts as closely bordering on the sea, and described by the Russians as a „très petite distance", may really be at a very considerable distance from the coast, and to provide for which case the distance ought to be limited, as Sir Charles Bagot proposed, to a few leagues, say not exceeding ten, from the shores. (B.C., App. p. 80.)

When the Russians accepted the 10-marine-league line parallel to the sinuosities of the coast, as proposed by Sir Charles Bagot, as an alternative line to be applied in case the mountain chain proved to run of into the interior, and when they signed the Treaty with the provision for that line, there had never been the slightest intimation that the word „coast" was used in any other sense than that ascribed to it by Sir Charles Bagot in his original proposal of the line, that is to say, as equivalent to shore.

That the Russians understood that the word „coast" was used in this sense appears clearly from the fact that while the draft Treaty proposed by Mr. Canning, and inclosed in his letter of the 12th July 1824, contained the same words that are used in the Treaty, that the line should be „carried along that coast in a direction parallel to its windings" (B.C., App., p. 87). Count Lieven transmits the draft to Count Nesselrode in a letter which describes this line as running along the base of the mountains which follow the sinuosities of the shore („les sinuosités du rivage"). (B.C., App., pp. 88, 89.)

That the negotiators understood that the shore which they were describing was one a line parallel to which would give Russia the heads of all the inlets is apparent from Sir Charles Bagot's description of the effect of his offer of the 10-marine-league line, already cited, in which he declares that it would give to Russia all the islands and the waters adjacent or which are to be found between the Russian establishment and the mainland (B.C., App., p. 73), and by the letter of the Hudson's Bay

Company to Mr. Canning, in which Mr. Pelly says that he is at a loss to understand „why Great Britain should cede to Russia the exclusive right to the islands and the coast from latitude 54⁰ 40′ northward to Mount Elias“ (B.C,, App., p. 81). An arrangement under which substantially all the harbours and ports for trade on the coast were retained by Great Britain certainly would not be a cession of the exclusive right to the coast. If Great Britain was retaining the most valuable part of the coast it was unknown to the Hudson's Bay Company, upon whose settlements Great Britain based all her claims to territory, which was conducting all the trade that Great Britain was endeavouring to protect, which was most familiar with the country to which the Treaty related, most interested iu the result, and which was consulted at every step of the negotiations. If Mr. Canning had considered that such was the effect of the proposed arrangement, a prompt explanation of his advisers' mistake would have followed, and a modification of the terms of the Treaty in such a way as to make it clear that he was not ceding an exclusive right to the whole coast.

In the face of this clear statement by the Hudson's Bay Company of their understanding that the effect of drawing a line either along the mountains or at 10 marine leagues from the shore would be to „cede to Russia the exclusive right to the islands and the coast, from latitude 54⁰ 40′ northward to Mount Elias“, the absence of any single word in the Treaty, or any draft of it, or in any of the negotiations, referring in any way whatever to Great Britain's having the heads of the bays and inlets, or the territory about them, a special significance, and indicates most clearly that no such idea was entertained by the British negotiators.

It is argued by Counsel for Great Britain that Article VII of the Treaty, which gives to the vessels of the two Powers reciprocal rights to frequent the inland seas, gulfs, havens, and creeks on the coast mentioned in Article III, shows that Great Britain was the possessor of inland seas, gulfs, havens, and creeks on the coast along which the lisière ran, that is, between latitude 54⁰ 40′ and latitude 60⁰. The argument is that Article VII applies exclusively to that part of the coast, and it is to be inferred, therefore, that the reciprocal rights which were granted on the part of Great Britain in that Article were rights to inlets, &c., which she had under the Treaty in that part of the coast.

But the coast mentioned in Article III is the „coast of the continent“. It is true the same Article describes the boundary of the lisière as being parallel to the coast, but there is no warrant whatever for limiting the reference of Article VII to anything less than the possession of the two parties upon the coast of the continent — the entire coast mentioned in Article III. If Great Britain had no other possessions upon the coast of the continent in which she could give reciprocal rights to Russia, there would be some force in the argument, but by the terms of this very Treaty the coast from the head of the Portland Canal to the southern limits of the Russian claims, viz., latitude 51⁰, was assigned to Great

Britain, and upon that stretch of coast, a part of the coast mentioned in Article III, there were numerous gulfs, havens, and creeks. The terms of Article VII are, therefore, entirely satisfied, without assigning the rights granted by Great Britain to any part of the coast north of the head of the Portland Canal.

The view that the grant by Great Britain in Article VII was intended to apply, not to the lisière, but to the coast to the south of it, is supported by the fact that by the terms of the Treaty of 1818 between the United States and Great Britain, those countries acknowledged equal rights, each in the other, to the coast south of 54° 40′, and that Article VII of the Treaty now under consideration was taken bodily from the Treaty of the 5th April 1824, between Russia and the United States, which, in the same words, granted reciprocal rights in the possessions of the two parties on „the north-west coast of America". The provision of the American Treaty could not have been intended to confer upon Russia any right except below 54° 40′, for America had none. The natural inference from the incorporation of this same provision into the British Treaty would be that it was intended to give Russia the same rights from the co-tenant of the same coast.

A further examination of the history of Article VII leaves no doubt that instead of the grant of rights by Great Britain to Russia in that Article being intended to apply exclusively to the coast of the lisière, it was intended to apply exclusively to the coast below the lisière; for the first appearance of the Article was in the draft Treaty prepared by Mr. Canning, and inclosed by him in his letter to Sir Charles Bagot of the 12th July 1824. In that draft Mr. Canning proposed, in Article III, a provision, not that there should be reciprocal rights in regard to the lisière, but that Russia sohuld grant to British subjects a perpetual right to navigate and trade along the coast of the lisière; while the reciprocal provision for ten years, which now constitutes Article VII, was proposed as Article V of the draft, „with regard to the other parts of the north-west coast of America" (B. C., App., p. 87). This was after the American Treaty of 1824, and Article V of Mr. Canning's draft, providing for reciprocal relations in the other parts of the north-west coast, copied the language of the American Treaty. As England had unquestionably no interests in the parts of the north-west coast other than the lisière, except south of the lisière, the reciprocal provision proposed by Great Britain, solely to the same coast which was affected by the American grant in the Treaty of 1824.

Russia refused to grant to British subjects the perpetual right to trade in the lisière, but expressed a willingness to give such a right for ten years, and she carried into the Treaty of 1825, now under consideration, the reciprocal provision which Br. Canning proposed as to the other parts of the north-west coast, unchanged, except that the words „other parts" were stricken out; so that the reciprocal clause operated not only to accomplish the original effect of a British grant of rights to Russia below

the lisière for ten years, but also of a Russian grant to British subjects of rights in the lisière for ten years.

There is absolutely no ground for claiming that, in broadening the scope of Mr. Canning's original reciprocal provision so that it would include a grant by Russia in the lisière, it was intended to exclude the other parts of the coast, to which solely the provision originally applied.

The maps which we have said furnished an interpretation of the Treaty by the parties include.

The Russian Admiralty Chart of 1826 (U. S. Atlas, Nr. 11); the Russian Admiralty Chart of 1844 (U. S. Atlas, No. 22, British Atlas, No. 15); Atlas sent by Sir J. H. Pelly, the Governor of the Hudson's Bay Company, 13th September 1849, to Earl Grey, as part of a startement of the rights as to territory, trade, taxation, and government, claimed and exercised by the Hudson's Bay Company, and printed in the Parliamentary Papers of the House of Commons, 11th July 1850 (U. S. C.-C. p. 253; British Atlas, No. 19); map produced by Sir George Simpson, Governor of the Hudson's Bay territories, before a Select Committee of the House of Commons on the affairs of the Hudson's Bay Company, as showing the territory leased by that Company from the Russian-American Company, and published by order of the House of Commons in 1857 (U. S. C.-C., App., pp. 38, 39; British Atlas, No. 21); British Colonial Office manuscript map of 1831 (British Atlas, No. 13); British Admiralty Chart of 1856, corrected 1861, 1862, and 1864 (U. S. Atlas, No. 23); British Admiralty Chart of 1876 (U. S. Atlas, No. 38); official map of the Dominion of Canada, showing the extent and situation of its public lands, published by the Canadian Department of the Interior in 1878 (U. S. Atlas, No. 39); map published by the Canadian Department of Railways 1883 (U. S. Atlas, No. 43); official map of Province of British Columbia published by the Commissioner of Lands and Works, Victoria 1884 (British Atlas, No. 31): map of the Dominion of Canada, published in 1884 by the Director of the Canadian Geological Survey from surveys made by the Geological Corps 1842 to 1882 (British Atlas, Nr 32); the map published by the United States' Coast Survey in 1867, compiled for the Department of State at the time of the purchase of Alaska by the United States (U. S. Atlas, No. 24).

In all of these maps the boundary line is drawn around the heads of the inlets. It is not contended that this boundary line was an accurate location of the true boundary. In the absence of knowledge as to the mountains, it appears to have been drawn on the 10-marine-league line, measuring from the heads of the bays and inlets. It precludes no one from saying that the occurrence of a mountain crest within 10 marine leagues of the coast would call for a change of the position of the line. But it is manifest, that in every case the line was drawn in accordance with the American theory of what constituted the coast, and not in accordance with the theory now maintained by the Counsel for Great Britain as to what constitutes the coast. According to the construction of the Treaty claimed by the British Case, the 10-marine-league line

should have been drawn across the Lynn Canal $34^1/_2$ miles from its mouth. In all those maps it is drawn 90 miles away from that point, $34^1/_2$ miles above the head of the Lynn Canal. It is not contended that the action of any one of the officials making these maps worked an estoppel against his Government, but the uniform and continuous adoption and promulgation for sixty years, by all these officers, of the view that the line went around the head of the Lynn Canal, without a single map, or paper, or act, or word indicating the existence of any differing view on the part of their Governments, certainly does lead to a strong inference that their Governments understood the Treaty consistently with the maps, and not inconsistently with them.

It would be a strange thing if, six years after the Treaty was made, the British Colonial Office recorded the limits of the British possessions in North-west America inconsistently with the views of the British Government; that for fifty years after the making of this Treaty of 1825, the British Admiralty should issue the charts which constituted the guide for the vessels of the British Navy, putting down upon them the heads of the bays and inlets in Southern Alaska as being Russian waters, if the British Government regarded them as British waters; that the Government of British Columbia, the Canadian Department of the Interior, Department of Railroads and Geological Survey, should all be mistaken regarding the construction which the British Government put upon this Treaty. It would be a still stranger thing if Mr. Pelly, Governor of the Hudson's Bay Company, who was Mr. Canning's adviser throughout the negotiations of the Treaty, and Sir George Simpson, who was the Resident Governor in America, both at the time the Treaty was made and at the time the Hudson's Bay Company leased the property from the Russian-American Company, were ignorant of the construction put upon the Treaty by the British Government, and, being in charge of the great interests directly affected by that construction, continued the rest of their lives in that ignorance.

It is impossible to resist the conclusion that the construction of the Treaty now contended for by Great Britain is an after thought, never entertained by any officer of the British Government during the lifetime of the makers of the Treaty, and originated at least sixty years after the Treaty was signed.

The principal feature of Russia's occupation of Alaska was that in 1839 the Russian-American Company, with the express assent of the Russian Government, leased to the Hudson's Bay Company the mainland coast from Cape Spencer to the Portland Canal, and that this lease was renewed from time to time until the American purchase. The terms of the lease were apt to describe the entire coast, and the maps showing the leased territory, which were furnished to the British Government by Sir J. H. Pelly in 1849 and Sir George Simpson in 1857, showed that territory to include the heads of the bays and inlets and all the land surrounding them. It is conceded that the British Government knew of the lease, for it was given

in settlement of a claim which the British Government was pressing against the Russian Government, the subject of a diplomatic controversy regarding the construction of the Treaty of 1825. The knowledge of the territory leased is brought home to the British Government by the last-mentioned maps. If the Government of Great Britain considered that the true construction of the Treaty gave to that Government, and therefore to the Hudson's Bay Company, the heads of the inlets and the territory surrounding them, it is quite impossible that, without a word upon that subject, the Hudson's Bay Company should have recognized Russia's title to that very territory by becoming a tenant.

Upon the purchase of Alaska by the United States in 1867, the officers of the United Staates took formal possession, with appropriate ceremonies, of the territory at the head of the Lynn Canal, and the officers of the Hudson's Bay Company surrendered the possession which they had theretofore held as tenants of Russia, and departed, leaving the head of the Lynn Canal in the possession of the United States. From that time until the present the United States has retained that possession, and has performed the duties and exercised the powers of sovereignty there.

For certainly more than twenty years after that, there was not a suggestion from the British Government that the possession was not rightful. In the meantime, the Naval and Military officers of the United States governed the Indians who lived at the heads of the inlets; those Indians were included in the United States' Census; order was enforced among them, and their misdeeds were punished by the United States; a public school and mission schools were established at the head of the Lynn Canal, under the auspices of the United States' Government; the land laws of the United States were extended over the territory, and mineral claims were located in the territory now in question; the revenue laws of the United States were extended over the territory, and were enforcod in the territory in question; foreign vessels were forbidden to unload ad Chilkat, and obeyed this prohibition; a post-office was established at the head of the Lynn Canal; an astronomical station of the United States' Coast Survey was established there; factories for the canning of salmon were erected and operated by American citizens; and all these operations of Government were unaccompanied by any suggestion that the United States was not rightfully there. In the meantime, Great Britain refrained from exercising, or attemting to exercise, any of the functions of Government in the neighbourhood of these inlets. The true condition was stated by the Prime Minister of Canada, in the Canadian Parliament, on the 16th February, 1898, when he said:

„My honourable friend is aware that, although this is disputed territory, it has been in the possession of the United States ever since they acquired this country from the Russian Government in 1867, and, so far as my information goes, I am not aware that any protest has ever been raised by any Government against the occupation of Dyea and Skaguay by the United States;"

and when, on the 7th March 1898 he said:

„The fact remains that, from time immemorial, Dyea was in possession of the Russians, and in 1867 it passed into the hands of the Americans, and it has been held in their hands ever since. Now, I will not recriminate here; this is not the time nor the occasion for doing so, but, so far as I am aware, no protest has ever been entered against the occupation of Dyea by the American authorities, and when the American authorities are in possession of that strip of territory on the sea which has Dyea as its harbour, succeeding the possession of the Russians from time immemorial, it becomes manifest to everybody that at this moment we cannot dispute their possession, and that, before their possession can be disputed, the question must be determined by a settlement of the question involved in the Treaty."

It is manifest that the attempt to dispute that possession to which the Prime Minister refers is met by the practical, effective construction of the Treaty presented by the long-continued acquiescence of Great Britain in the construction which gave the territory to Russia and the United States, and to which the Prime Minister testifies. Only the clearest case of mistake could warrant a change of construction, after so long a period of acquiescence in the former construction, and no such case has been made out before this Tribunal.

(Signed) *Elihu Root.*
Henry Cabot Lodge.
George Turner.

October 20, 1903.

99.

GRANDE-BRETAGNE, FRANCE.

Convention concernant le règlement pacifique des conflits internationaux; signée à Londres, le 14 octobre 1903.

Treaty Series. No. 18. 1903.

The Government of His Britannic Majesty and the Government of the French Republic, signatories of the Convention for the pacific settlement of international disputes, concluded at the Hague on the 29th July, 1899;

Taking into consideration that by Article XIX of that Convention the High Contracting Parties have reserved

Le Gouvernement de Sa Majesté Britannique et le Gouvernement de la République Française, signataires de la Convention pour le règlement pacifique des conflits internationaux conclue à La Haye le 29 Juillet 1899;

Considérant que par l'Article XIX de cette Convention, les Hautes Parties Contractantes se sont réservé de

to themselves the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment,

Have authorized the Undersigned to conclude the following arrangement:

Article I.

Differences which may arise of a legal nature, or relating to the interpretation of Treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at the Hague by the Convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honour of the two Contracting States, and do not concern the interests of third Parties.

Article II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure.

Article III.

The present Agreement is concluded for a period of five years, dating from the day of signature.

Done in duplicate at London, the 14th day of October, 1903.

conclure des accords en vue du recours à l'arbitrage, dans tous les cas qu'elles jugeront possible de lui soumettre,

Ont autorisé les Soussignés à arrêter les dispositions suivantes:

Article I.

Les différends d'ordre juridique ou relatifs à l'interprétation des Traités existant entre les deux Parties Contractantes qui viendraient à se produire entre elles, et qui n'auraient pu être réglés par la voie diplomatique, seront soumis à la Cour Permanente d'Arbitrage établie par la Convention du 29 Juillet 1899 à La Haye, à la condition toutefois qu'ils ne mettent en cause, ni les intérêts vitaux ni l'indépendance ou l'honneur des deux États Contractants, et qu'ils ne touchent pas aux intérêts de tierces Puissances.

Article II.

Dans chaque cas particulier, les Hautes Parties Contractantes, avant de s'adresser à la Cour Permanente d'Arbitrage, signeront un compromis spécial, déterminant nettement l'objet du litige, l'étendue des pouvoirs des Arbitres et les délais à observer, en ce qui concerne la constitution du Tribunal Arbitral et la procédure.

Article III.

Le présent Arrangement est conclu pour une durée de cinq années, à partir du jour de la signature.

Fait à Londres, en double exemplaire, le 14 Octobre 1903.

(L. S.) *Lansdowne.*
(L. S.) *Paul Cambon.*

100.

FRANCE.

Loi relative à l'extension des privilèges et immunités diplomatiques aux membres d'un tribunal d'arbitrage; du 2 décembre 1903.

Journal officiel du 6 décembre 1903.

Le Sénat et la Chambre des députés ont adopté,

Le Président de la République promulgue la loi dont la teneur suit:

Article unique. — Les membres non français d'un tribunal arbitral, siégeant en France par application de la convention pour le règlement pacifique des conflits internationaux, signée à La Haye, le 29 juillet 1899,*) jouiront, dans l'exercice de leurs fonctions, des privilèges et immunités diplomatiques.

La présente loi, délibérée et adoptée par le Sénat et par la Chambre des députés, sera exécutée comme loi de l'Etat.

Fait à Paris, le 2 décembre 1903.

Emile Loubet.

Par le Président de la République:

Le Ministre des Affaires étrangères,
Delcassé.

Le Garde des Sceaux, ministre de la justice,
E. Vallé.

Le Ministre des finances,
Rouvier.

101.

GRANDE-BRETAGNE, ITALIE.

Convention concernant le règlement pacifique des conflits internationaux; signée à Rome, le 1er février 1904.

Treaty Series. No. 3. 1904.

The Government of His Britannic Majesty and the Government of His Majesty the King of Italy, signatories of the Convention for the pacific settlement of international disputes, concluded at The Hague on the 29th July, 1899;

Il Governo di Sua Maestà il Re d'Italia ed il Governo di Sua Maestà Britannica, firmatarî della Convenzione per il regolamento pacifico dei conflitti internazionali conchiusa all'Aja il 29 luglio 1899;

*) V. N. R. G. 2e s. XXVI.

Taking into consideration that by Article XIX of that Convention the High Contracting Parties have reserved to themselves the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment,

Have authorized the Undersigned to conclude the following arrangement:

Article I.

Differences which may arise of a legal nature, or relating to the interpretation of Treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honour of the two Contracting States, and do not concern the interests of third Parties.

Article II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure.

Article III.

The present Agreement is concluded for a period of five years, dating from the day of signature.

Done in duplicate, at Rome, the first day of February, 1904.

(Signed) (L. S.) *Francis Bertie.*

Considerando che, coll'Art. XIX di tale Convenzione, le Alte Parti Contraenti si sono riservata la facoltà di conchiudere degli accordi allo scopo di deferire all'arbitrato tutte le questioni che esse giudicheranno possibile di sottoporre a tale procedimento,

Hanno autorizzato i Sottoscritti a conchiudere il seguente Accordo:

Articolo I.

Le vertenze d'indole giuridica o relative all'interpretazione di Trattati esistenti tra le due Parti Contraenti, che venissero a sorgere, e che non fosse stato possibile di definire in via diplomatica, saranno deferite alla Corte Permanente d'Arbitrato istituita all'Aja mercè la Convenzione del 29 luglio 1899, a condizione, tuttavia, che tali vertenze non tocchino gli interessi vitali, l'indipendenza o l'onore dei due Stati Contraenti, e non concernano gli interessi di terze Potenze.

Articolo II.

In ogni singolo caso le Alte Parti Contraenti, prima di rivolgersi alla Corte Permanente di Arbitrato, firmeranno un Compromesso speciale, il quale determini chiaramente l'oggetto del litigio, la estensione dei poteri degli arbitri ed i termini da osservarsi per ciò che concerne la costituzione del Tribunale arbitrale e le varie fasi della procedura.

Articolo III.

Il presente Accordo è concluso per la durata di cinque anni, decorrenti dal giorno della firma.

Fatto a Roma, in doppio esemplare, il 1° Febbraio, 1904.

(L.S.) (Firmato) *Tommaso Tittoni.*

102.

ESPAGNE, FRANCE.

Convention d'arbitrage; signée à Paris, le 26 février 1904.*)

Boletin oficial del Ministerio de Estado. No. 5. 1904.

El Gobierno de S. M. el Rey de España y el Gobierno de la Republica francesa, firmantes del Convenio ajustado para el arreglo pacifico de los conflictos internacionales en El Haya el 29 de Julio de 1899:

Considerando que por el art. XIX de dicho Convenio las Altas Partes Contratantes se han reservado la facultad de celebrar acuerdos con el objeto de recurrir al arbitraje en todos los casos que ellas juzguen posible someter á tal procedimiento;

Han autorizado á los infrascritos á convenir en las disposiciones siguientes:

Artículo I

Las diferencias de indole juridica ó relativas á la interpretación de los Tratados existentes entre las dos Partes Contratantes que llegasen á surgir entre ellas y que no hubiese sido posible arreglar por la vía diplomática, serán sometidas al Tribunal permanente de Arbitraje, instituído en El Haya por el Convenio de 29 de Julio de 1899, á condicíon, siu embargo, de que tales diferencias no afecten á los intereses vitales, la independencia ó el honor de los dos Estados Contratantes y que no conciernen á los intereses de terceras Potencias.

Artículo II.

En cada caso particular las Altas Partes Contratantes firmarán, antes de dirigirse al Tribunal permanente de Arbitraje, un Compromiso especial que determinará claramente el objeto del litigio, extensión de los poderes de los árbitros y los plazos que deben observarse en lo que concierne á la constitución del Tribunal Arbitral y el procedimiento que deba seguirse.

Artículo III

El presente Convenio durará cinco años, contados desde el dia de la firma.

Hecho en Paris, por duplicado, el 26 de Febrero de 1904.

(L. S.) *F. de León y Castillo.*
(L. S.) *Delcassé.*

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*) Les ratifications ont été échangées à Paris le 20 avril 1904.

103.

GRANDE-BRETAGNE, ESPAGNE.

Convention concernant le règlement pacifique des conflits internationaux; signée à Londres, le 27 février 1904.

Treaty Series. No. 4. 1904.

The Government of His Britannic Majesty and the Government of His Catholic Majesty the King of Spain, signatories of the Convention for the pacific settlement of international disputes concluded at The Hague on the 29th July 1899;

Taking into consideration that by Article XIX of that Convention the High Contracting Parties have reserved to themselves the right of concluding Agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment.

Have authorized the Undersigned to conclude the following arrangement:

Article I.

Differences which may arise of a legal nature, or relating to the interpretation of Treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July 1899, provided, nevertheless, that they do not affect the vital interests, the independencc, or the honour of the two Contracting States, and do not concern the interest of third Parties.

Article II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure.

Artricle III.

The present Agreement is concluded for a period of five years, dating from the day of signature.

Done in duplicate, at London, the 27th day of February 1904.

(L. S.) *Lansdowne.*
(L. S.) *Mandas.*

104.

GRANDE-BRETAGNE, BRÉSIL, ITALIE.

Sentence arbitrale rendue par le roi d'Italie pour trancher la question des limites entre le Brésil et la Guyane anglaise; signée à Rome, le 6 juin 1904.

Parliamentary Papers. Août 1904.

Noi, Vittorio Emanuele III, per grazia di Dio e volontà della Nazione Re d'Italia, Arbitro per decidere la questione della frontiera tra la Guaiana Britannica ed il Brasile.

Sua Maestà il Re del Regno Unito della Gran Bretagna e dell'Irlanda, Imperator delle Indie, ed il Presidente degli Stati Uniti del Brasile, avendo stabilito, col Trattato tra loro concluso a Londra il 6 Novembre 1901, d'invitarci a decidere quale Arbitro la questione della frontiera fra la Guaiana Britannica ed il Brasile, abbiamo accettato di definire tale delimitazione.

Avendo le Alte Parti contendenti assunto impegno col mentovato Trattato, che fu ratificato a Rio de Janeiro il 28 Gennaio 1902, di accettare la nostra decisione arbitrale come regolamento completo, e definitivo della questione a Noi deferita, volendo corrispondere alla fiducia che le detti Parti hanno riposto in Noi, abbiamo esaminato attentamente tutte le Memorie e tutti i Documenti a Noi esibiti, ed abbiamo ponderate e vagliate le ragioni sulli quali ciascuna delle due Alte Parti fonda il proprio diritto.

Tenuto giusto conto di tutto, abbiamo considerato:

Che la scoperta di nuove vie di traffico in regioni non appartenenti a nessuno Stato non puó essere un titolo di per sè stesso efficace a che la sovranità di dette regioni sia aquistata dallo Stato, di cui sieno cittadini i privati scopritori;

Che per acquistare la sovranità delle regione le quali non siano nel dominio di alcuno Stato, è indispensabile di effettuarne l'occupazione in nome dello Stato che intende acquistarne il dominio;

Che l'occupazione non può ritenersi attuata fuorchè colla presa di possesso effetiva, non interrotta e permanente, in nome dello Stato; e non può bastare la semplice affermazione dei diritti di sovranità, o la manifestata intenzione di volere rendere effettiva l'accupazione;

Che il possesso effettivo di una parte di regione, quantunque possa ritenersi efficace per acquistare la sovranità di tutta una regione che constituisca un unico organismo, non può essere efficace per acquistarla su tutta una regione che, o per la sua estensione, o per la sua configurazione fisica, non possa essere reputata quale unità organica di fatto;

Che quindi, tutto giustamente considerato, non si puó riternere che il Portogallo dapprima, ed il Brasile di poi, abbiano attuata la presa di possesso effettivo di tutto il territorio in contesta; ma si puó riconoscere soltanto che essi si siano posti in possesso di alcuni luoghi del medesimo, e che vi abbiano esercitato i loro diritti sovrani.

Dall'altra parte abbiamo considerato:

Che la sentenze arbitrale del 3 Ottobre, 1899*), pronunziata dal Tribunale Anglo-Americano, la quale, decidendo la vertenza fra la Gran Bretagna ed il Venezuela, attribuì alla prima il territorio costituente l'obbietto del'attuale contesta, non può fare stato contro il Brasile che fu estraneo a quel giudizio;

Che però il diritto dello Stato Britannico, nella sua qualità di successore dell'Olanda, cui apparteneva la Colonia, è basato sull'esercizio dei diritti di giurisdizione da parte della Compagnia Olandese delle Indie Occidentale, la quale, munita di poteri sovrani dal Governo Olandese, fece atti di autorità sovrana su alcuni luoghi della zona in discussione, regolando il commercio che da lungo tempo vi si esercitava dagli Olandesi, disciplinandolo, assoggettandolo agli ordini del Governatore della Colonia, ed ottenendo che gli indigeni riconoscessero parzialmente il potere del medesimo;

Che tali atti di autorità e di giurisdizione rispetto ai commercianti ed alle tribù indigene furono poi continuati in nome della sovranità Britannica, quando la Gran Bretagna entrò in possesso della Colonia appartenente agli Olandesi;

Che tale affermazione effettiva di dritti di giurisdizione sovrana fu a grado a grado sviluppata e non contradetta, e di mano in mano si andò altresì accettando dalle tribù indigene indipendenti, abitanti le regioni, che non potevano essere ritenute nel dominio effettivo nella sovranità Portoghese e di poi Brasiliana;

Che in forza di tale sucessivo sviluppo del potere giurisdizionale venne attuandosi l'acquisto della sovranità da parte dell'Olanda dapprima, e della Gran Bretagna di poi, su di una certa parte del territorio in contesa;

Che ponderati e valutati al giusto i Documenti a Noi esibiti, non resultano da essi titoli storici e giuridici, su cui fondare diritti di sovranità ben determinati e ben definiti, a favore dell'una o dell'altra delle Potenze contendenti, su tutto il territorio in questione, ma soltanto su alcune parti del medesimo;

Che il limite della zona di territorio sulla quale debba ritenersi stabilito il diritto di sovranità dell'una o quello dell'altra delle due Alte Parti neppure esso può essere fissato con precisione;

Che non si può neanche decidere sicuramente se sia prevalente il diritto del Brasile o quello della Gran Bretagna.

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*) V. **N. R. G.** 2e XXIX. 581.

In tale condizione di cose, dovendo Noi fissare la linea di frontiera tra i dominì delle due Potenze, ci siamo convinti che, allo stato attuale della conoscenza geografica della regione, non è possibile dividere il territorio contestato in due parti uguali per estensione o per valore, ma che s'impone la necessità di partirlo tenendo conto delle linee tracciate dalla natura, e di prescegliere la linea che, essendo meglio determinata in tutto il suo percorso, più si presti ad un'equa ripartizione del territorio controverso.

Per tali motivi così decidiamo:

La frontiera fra la Guaiana Britannica ed il Brasile rimane fissata dalla linea che parte dal Monte Jacontipù (Yakontipu); segue, verso est, lo spartiacque sino alla sorgente dell'Ireng (Mahù); discende il corso di questo fiume sino alla confluenza col Tacutù; rimonta il Tacutù sino alla sua sorgente, ove raggiunge la linea di frontiera stabilita colla Dichiarazione aggiunta al Trattato di Arbitrato concluso a Londra dalle Alte Parti Contendenti il 6 novembre 1901.

In forza di tale delimitazione tutta la parte della zona in contesta che si trova ad oriente della linea di frontiera apparterrà alla Gran Bretagna; tutta quella parte che si trova ad occidente, apparterrà al Brasile.

La frontiera lungo i fiumi Ireng-Mahù e Tacutù rimane fissata dalla linea d'impluvio (Thalweg), e detti fiumi sarrano aperti alla libera navigazione dei due Stati limitrofi.

Qualora i corsi di acqua si dividessero in più rami, la frontiera seguirà la linea d'impluvio (Thalweg) del ramo più ad oriente.

Dato a Roma, 6 Giugno 1904.

(Firmato) *Vittorio Emanuele.*

(Translation.)

We, Victor Emmanuel, by the grace of God and the will of the people King of Italy, Arbitrator in the matter of deciding the question of the frontier between British Guiana and Brazil.

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, and the President of the United States of Brazil, having, in the Treaty concluded between them in London on the 6th November, 1901, decided to invite Us as Arbitrator to settle the question of the frontier of British Guiana and Brazil, We have accepted the task of defining the limits of the frontier.

The High Contracting Parties having undertaken, in the above-mentioned Treaty which was ratified at Rio de Janeiro on the 28th January, 1902, to accept our arbitral decision as a complete, perfect, and definitive settlement of the question referred to Us, We, wishing to act in a manner corresponding to the trust reposed in Us by the said Parties, have examined carefully all the Memoranda and all the documents produced to Us, and

have weighed and duly considered the reasons on which each of the High Contracting Parties founds its claim.

Having taken due note of everything, We have considered:

That the discovery of new channels of trade in regions not belonging to any State cannot by itself be held to confer an effective right to the acquisition of the sovereignty of the said regions by the State, whose subjects the persons who in their private capacity make the discovery may happen to be;

That to acquire the sovereignty of regions which are not in the dominion of any State, it is indispensable that the occupation be effected in the name of the State which intends to acquire the sovereignty of those regions;

That the occupation cannot be held to be carried out except by effective, uninterrupted, and permanent possession being taken in the name of the State, and that a simple affirmation of rights of sovereignty or a manifest intention to render the occupation effective cannot suffice;

That the effective possession of a part of a region, although it may be held to confer a right to the acquisition of the sovereignty of the whole of a region which constitutes a single organic whole, cannot confer a right to the acquisition of the whole of a region which, either owing to its size or to its physical configuration, cannot be deemed to be a single organic whole de facto;

That consequently, all things duly considered, it cannot be held that Portugal in the first instance, and Brazil subsequently, have effectively taken possession of all the territory in dispute; but that it can only be recognized that they have taken possession of some places in the same, and have there exercised their sovereign rights.

On the other hand, We have had under our consideration

That the arbitral Judgment of the 3rd October, 1899, delivered by the Anglo-American Tribunal, which, when, deciding the boundary between Great Britain and Venezuela, adjudged to the former the territory which constitutes the subject of the present dispute, cannot be cited against Brazil, which was unaffected by that Judgment;

That, however, the right of the British State as the successor to Holland, to whom the Colony belonged, is based on the exercise of rights of jurisdiction by the Dutch West India Company, which, furnished with sovereign powers by the Dutch Government, performed acts of sovereign authority over certain places in the zone under discussion, regulating the commerce carried on for a long time there by the Dutch, submitting it to discipline, subjecting it to the orders of the Governor of the Colony, and obtaining from the natives a partial recognition of the power of that official;

That like acts of authority and jurisdiction over traders and native tribes were afterwards continued in the name of British sovereignty when Great Britain came into possession of the Colony belonging to the Dutch;

That such effective assertion of rights of sovereign jurisdiction was gradually developed and not contradicted, and, by degrees, became accepted

even by the independent native tribes who inhabited these regions, who could not be considered as included in the effective dominion of Portuguese, and later on of Brazilian, sovereignty;

That in virtue of this successive development of jurisdiction and authority the acquisition of sovereignty on the part of Holland first, and Great Britain afterwards, was effected over a certain part of the territory in dispute;

That it does not appear from the documents produced to Us, which have been weighed and duly considered, that there are historical and legal claims on which to found thoroughly determined and well-defined rights of sovereignty in favour of either of the contending Powers over the whole territory in dispute, but only over certain portions of the same;

That not even the limit of the zone of territory over which the right of sovereignty of one or of the other of the two Parties may be held to be established can be fixed with precision;

That it cannot either be decided with certainty whether the right of Brazil or of Great Britain is the stronger.

In this condition of affairs, since it is our duty to fix the line of frontier between the dominions of the two Powers, We have come to the conclusion that, in the present state of the geographical knowledge of the region, it is not possible to divide the contested territory into two parts equal as regards extent and value, but that it is necessary that it should be divided in accordance with the lines traced by nature, and that the preference should be given to a frontier which, while clearly defined throughout its whole course, the better lends itself to a fair division of the disputed territory.

For these reasons, We decide:

The frontier between British Guiana and Brazil is fixed by the line leaving Mount Yakontipu; it follows eastwards the watershed as far as the source of the Ireng (Mahu); it follows the downward course of that river as far as its confluence with the Takutu; it follows the upward course of the Takutu as far as its source, where it joins again the line of frontier determined in the Declaration annexed to the Treaty of Arbitration concluded in London by the High Contending Parties on the 6th November, 1901.

In virtue of this delimitation every part of the zone in dispute, which is to the east of the line of frontier, shall belong to Great Britain, and every part which is to the west shall belong to Brazil.

The frontier along the Ireng-Mahu and Takutu is fixed at the „thalweg", and the said rivers shall be open to the free navigation of both conterminous States.

Wherever the watercourse may be divided into more than one branch, the frontier shall follow the „thalweg" of the most eastern branch.

Given at Rome on the 6th June, 1904.

(Signed) *Victor Emmanuel.*

105.

SUÈDE ET NORVÈGE, FRANCE.

Convention pour le règlement pacifique des conflits internationaux; faite à Paris, le 9 juillet 1904.*)

Overenskomster med fremmede Stater. No. 4. 1904.

Sa Majesté le Roi de Suède et de Norvège et le Président de la République Française désirant, en application des principes énoncés dans les articles 15—19 de la convention pour le règlement pacifique des conflits internationaux, signée à La Haye en date du 29 juillet 1899, entrer en négociations pour la conclusion d'une convention d'arbitrage, ont nommé pour leurs Plénipotentiaires, savoir:

Sa Majesté le Roi de Suède et de Norvège:

M. Åkerman, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près le Président de la République Française;

et

le Président de la République Française:

M. Th. Delcassé, Député, Ministre des Affaires Etrangères de la République Française,

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des articles suivants:

Article I.

Les différends d'ordre juridique ou relatifs à l'interprétation des traités existant entre les Hautes Parties contractantes, qui viendraient à se produire entre elles et qui n'auraient pu être réglés par la voie diplomatique, seront soumis à la Cour permanente d'arbitrage établie par la Convention du 29 juillet 1899, à La Haye, à la condition, toutefois, qu'ils ne mettent en cause ni les intérêts vitaux, ni l'indépendance ou l'honneur des Etats contractants, et qu'ils ne touchent pas aux intérêts de tierces Puissances.

Article II.

Dans chaque cas particulier, les Hautes Parties contractantes, avant de s'adresser à la Cour permanente d'arbitrage, signeront un compromis spécial, déterminant nettement l'objet du litige, l'étendue des pouvoirs des arbitres et les délais à observer, en ce qui concerne la constitution du tribunal arbitral et la procédure.

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*) Les ratifications ont été échangées à Paris, le 9 novembre 1904.

Article III.

La présente Convention est conclue pour une durée de cinq années, à partir de l'échange des Ratifications, qui aura lieu aussitôt que faire se pourra.

Fait à Paris, en double exemplaire, le 9 juillet 1904.

(L. S.) (signé) *Åkerman.*
(L. S.) (signé) *Delcassé.*

106.

ALLEMAGNE, GRANDE-BRETAGNE.

Convention concernant le règlement pacifique des conflits internationaux; signée à Londres, le 12 juillet 1904.

Treaty Series. No. 6. 1904.

The Government of His Britannic Majesty and the Imperial German Government, signatories of the Convention for the pacific settlement of international disputes, concluded at The Hague on the 29th July 1899;

Taking into consideration that by Article XIX of that Convention the High Contracting Parties have reserved to themselves the right of concluding Agreements with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment,

Have authorized the Undersigned to conclude the following arrangement:

Article I.

Differences which may arise of a legal nature, or relating to the interpretation of Treaties existing between the two Contracting Parties and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July 1899,

Die Königlich Grossbritannische Regierung und die Kaiserlich Deutsche Regierung als Mitunterzeichner des am 29. Juli 1899 im Haag unterzeichneten Abkommens zur friedlichen Erledigung internationaler Streitfälle

In Erwägung, dass die hohen vertragschliessenden Teile durch Artikel XIX des Abkommens sich vorbehalten haben, Uebereinkommen abzuschliessen, um alle Fragen der Schiedssprechung zuzuführen, die dieser nach ihrer Ansicht unterworfen werden können,

Haben die Unterzeichneten ermächtigt, folgendes Abkommen zu schliessen:

Artikel I.

Streitige Rechtsfragen und Streitfragen, die sich auf die Auslegung der zwischen den beiden vertragschliessenden Teilen bestehender Verträge beziehen, sollen, sofern sie nicht auf diplomatischem Wege haben erledigt werden können, dem durch das Abkommen vom 29. Juli 1899 eingesetzten ständigen Schiedshof im

provided, nevertheless, that they do not affect the vital interests, the independence, or the honour of the two Contracting States, and do not concern the interests of third Parties.

Haag überwiesen werden. Dabei ist jedoch vorausgesetzt, dass solche Streitfragen nicht die vitalen Interessen, die Unabhängigkeit oder die Ehre der beiden vertragschliessenden Staaten berühren und nicht die Interessen dritter Mächte angehen.

Article II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure.

Artikel II.

In jedem Einzelfalle sollen die hohen vertragschliessenden Teile, bevor sie den ständigen Schiedshof anrufen, einen besonderen Schiedsvertrag abschliessen, der den Streitgegenstand, den Umfang der Befugnisse der Schiedsrichter und die Fristen klar bestimmt, die für die Bildung des Schiedsgerichts und die verschiedenen Abschnitte des Verfahrens festzusetzen sind.

Article III.

The present Agreement is concluded for a period of five years, dating from the day of signature.

Artikel III.

Das gegenwärtige Abkommen ist für einen Zeitraum von fünf Jahren, vom Tage der Unterzeichnung ab, geschlossen.

Done in duplicate at London, the 12th July 1904.

In doppelter Ausfertigung vollzogen zu London, den 12. Juli 1904.

(L. S.) *Lansdowne.*
(L. S.) *P. Metternich.*

107.

GRANDE-BRETAGNE, SUÈDE ET NORVÈGE.

Convention concernant le règlement pacifique des conflits internationaux; signée à Londres, le 11 août 1904.

Treaty Series. No. 8. 1904.

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty the King of Sweden and of

Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Possessions Britanniques au delà des Mers, Empereur des Indes, et Sa Majesté le Roi de Suède et de

Norway, signatories of the Convention for the pacific settlement of international disputes, concluded at The Hague on the 29th July, 1899;

Taking into consideration that by Article XIX of that Convention the High Contracting Parties have reserved to themselves the right of concluding agreements, with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment,

Have named as their Plenipotentiaries to conclude the following arrangement:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, the Most Honourable Henry Charles Keith Petty-Fitzmaurice, Marquess of Lansdowne, His Majesty's Principal Secretary of State for Foreign Affairs; and

His Majesty the King of Sweden and of Norway, the Baron de Bildt, His Envoy Extraordinary and Minister Plenipotentiary at London;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

Article I.

Differences which may arise of a legal nature, or relating to the interpretation of Treaties existing between the High Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honour of the

Norvège, signataires de la Convention pour le règlement pacifique des conflits internationaux conclue à La Haye le 29 Juillet 1899;

Considérant que par l'Article XIX de cette Convention, les Hautes Parties Contractantes se sont réservé de conclure des accords en vue du recours à l'arbitrage, dans tous les cas qu'elles jugeront possible de lui soumettre.

Ont nommé pour leurs Plénipotentiaires pour arrêter les dispositions suivantes:

Sa Majesté le Roi de la Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes le Très Honorable Henry Charles Keith Petty-Fitzmaurice, Marquis de Lansdowne, Principal Secrétaire d'État de Sa Majesté au Département des Affaires Étrangères; et

Sa Majesté le Roi de Suède et de Norvège, le Baron de Bildt, Son Envoyé Extraordinaire et Ministre Plénipotentiaire à Londres;

Lesquels, apres s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:

Article I.

Les différends d'ordre juridique ou relatifs à l'interprétation des Traités existant entre les Hautes Parties Contractantes qui viendraient à se produire entre elles, et qui n'auraient pu être réglés par la voie diplomatique, seront soumis à la Cour Permanente d'Arbitrage établie par la Convention du 29 juillet 1899, à La Haye, à la condition toutefois qu'ils ne mettent en cause, ni les intérêts vitaux ni l'indépendance ou l'honneur

Contracting States, and do not concern the interests of third Parties.

Article II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure.

Article III.

The present Convention, which shall be ratified, is concluded for a period of five years, dating from the exchange of the ratifications, which shall take place as soon as possible.

Done in duplicate at London, the 11th day of August, 1904.

des États Contractants, et qu'ils ne touchent pas aux intérêts de tierces Puissancees.

Article II.

Dans chaque cas particulier, les Hautes Parties Contractantes, avant de s'adresser à la Cour Permanente d'Arbitrage, signeront un compromis spécial, déterminant nettement l'objet du litige, l'étendue des pouvoirs des Arbitres et les délais à observer, en ce qui concerne la constitution du Tribunal Arbitral et la procédure.

Article III.

La présente Convention, qui sera ratifiée, est conclue pour une durée de cinq années, à partir de l'échange des ratifications, qui aura lieu aussitôt que faire se pourra.

Fait à Londres, en double exemplaire, le 11 Août 1904.

(L. S.) *Lansdowne.*
(L. S.) *Bildt.*

108.

RUSSIE, SUÈDE ET NORVÈGE.

Convention pour le règlement pacifique des conflits internationaux; signée à Saint-Pétersbourg, le 26 novembre (9 décembre) 1904.

Publication officielles de la Russie.

Sa Majesté l'Empereur de Toutes les Russies et Sa Majesté le Roi de Suède et de Norvège, signataires de la convention pour le règlement pacifique des conflits internationaux, conclue à La Haye le 29 juillet 1899, désirant, en application des principes énoncés aux articles 15—19 de la dite convention, entrer en négociations pour la conclusion d'une convention d'arbitrage obligatoire, ont nommé pour leurs plénipotentiaires, savoir:

Sa Majesté l'Empereur de Toutes les Russies:

Son Excellence le Comte Lamsdorff, Son Secrétaire d'Etat, Conseiller Privé Actuel et Ministre des Affaires Étrangères,

et

Sa Majesté le Roi de Suède et de Norvège:

le Comte Gyldenstolpe, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près la Cour Impériale de Russie;

Lesquels, après s'être communiqué leurs pleins-pouvoirs, trouvés en bonne et due forme, sont convenus des articles suivants:

Article 1.

Les Hautes Parties contractantes s'engagent à soumettre à la Cour Permanente d'arbitrage, établie à La Haye par la convention du 29 juillet 1899, les différends qui viendraient à s'élever entre Elles, pour autant qu'ils ne touchent ni à l'indépendance, ni aux intérêts vitaux, ni à l'exercice de la souveraineté des pays respectifs et qu'une solution amiable n'ait pu être obtenu par des négociations diplomatiques directes.

Article 2.

Chaque partie juge de la question de savoir si le différend que se sera produit met en cause son indépendance, ses interêts vitaux ou l'exercice de sa souveraineté et, par conséquent, est de nature à être compris parmi ceux qui, d'après l'article précédent, sont exceptés de l'arbitrage obligatoire.

Article 3.

Les Hautes Parties contractantes s'engagent à ne pas faire valoir des exceptions d'après l'article 2 dans les cas suivants:

I. En cas de contestations, lorsqu'il s'agit de l'interprétation ou de l'application de toute convention conclue ou à conclure entre les Hautes Parties contractantes et relative:

1. aux matières de droit international privé,

2. au régime des sociétés commerciales et industrielles légalement constituées dans l'un des pays,

3. aux matières de procédure soit civile, soit pénale.

II. En cas de contestations concernant des réclamations pécuniaires du chef de dommages lorsque le principe de l'indemnité est reconnu par les Parties.

Article 4.

La présente convention recevra son application même si les contestations qui viendraient à s'élever avaient leur origine dans des faits antérieurs à sa conclusion.

Article 5.

Lorsqu'il y aura lieu à un arbitrage entre Elles, les Hautes Parties contractantes, à défaut de clauses compromissoires contraires, se conformeront,

pour tout ce qui concerne la désignation des arbitres et la procédure arbitrale, aux dispositions établies par la convention signée à la Haye le 29 juillet 1899 pour le règlement pacifique des conflits internationaux, sauf en ce qui concerne les points indiqués ci-après.

Article 6.

Aucun des arbitres ne pourra être sujet des Etats signataires de la présente convention, ni domicile dans leurs territoires. Ils ne devront avoir aucun intérêt dans les questions qui feront l'objet de l'arbitrage.

Article 7.

S'il y a lieu, la sentence arbitrale contiendra l'indication des délais dans lesquels elle devra être exécutée.

Article 8.

Le compromis prévu par l'art. 31 de la convention du 29 juillet 1899 fixera un terme en déans lequel devra avoir lieu l'échange entre les deux parties des mémoires et documents se rapportant à l'objet du litige. Cet échange sera terminé dans tous les cas avant l'ouverture des séances du Tribunal arbitral.

Ces stipulations ne portent aucune atteinte à ce qui a été arrêté par la convention de la Haye concernant la seconde phase de la procédure arbitrale (art. 39) notamment aux dispositions des articles 43—49.

Article 9.

La présente convention aura la durée de dix ans à partir du jour de l'echange des ratifications. Dans le cas où aucune des Hautes Parties contractantes n'aurait notifié, six mois avant la fin de la dite période, son intention d'en faire cesser les effets, la convention demeurera obligatoire jusqu'à l'expiration d'une année à partir du jour où l'une ou l'autre des Hautes Parties contractantes l'aura dénoncée.

Article 10.

La présente convention sera ratifiée dans le plus bref délai possible et les ratifications seront échangées à St.-Petersbourg.

En foi de quoi les Plénipotentiaires ont signé la présente convention et l'ont revêtue du cachet de leurs armes.

Fait à St.-Pétersbourg, le 26 novembre (9 décembre) 1904.

(L. S.) (Signé) *Comte Lamsdorff.*
(L. S.) (Signé) *Aug. F. Gyldenstolpe.*

NOUVEAU

RECUEIL GÉNÉRAL

DE

TRAITÉS

ET

AUTRES ACTES RELATIFS AUX RAPPORTS DE DROIT INTERNATIONAL.

CONTINUATION DU GRAND RECUEIL

DE

G. FR. DE MARTENS

PAR

Felix Stoerk
Professeur de droit public à l'Université de Greifswald
Membre de l'Institut de droit international.

DEUXIÈME SÉRIE.

TOME XXXII.

TROISIÈME LIVRAISON.

LEIPZIG
LIBRAIRIE DIETERICH
THEODOR WEICHER
1905.

109.

ALLEMAGNE, AUTRICHE-HONGRIE, BELGIQUE, DANEMARK, ESPAGNE, FRANCE, ITALIE, LUXEMBOURG, PAYS-BAS, PORTUGAL, ROUMANIE, RUSSIE, SUÈDE ET NORVÈGE, SUISSE.

Procès-verbaux et Annexes de la troisième Conférence internationale réunie à la Haye du 29 mai au 18 juin 1900 chargée de réglementer diverses matières de droit international privé.

[Suite*).]

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Procès-verbal n° 1. (Séance du 29 mai 1900).

Les Gouvernements d'Allemagne, d'Autriche, de Hongrie, de Belgique, de Danemark, d'Espagne, de France, d'Italie, de Luxembourg, de Portugal, de Roumanie, de Russie, de Suède, de Norvège et de Suisse, ayant accepté l'invitation du Gouvernement des Pays-Bas de soumettre à un examen ultérieur le texte des règles qui ont été insérées dans le Protocole fait à La Haye le 25 juin 1894 au sujet du mariage, de la tutelle et des successions, testaments et donations à cause de mort et d'aborder en même temps d'autres matières de droit international privé, M.M. les Délégués des dits Gouvernements se sont réunis en Conférence aujourd'hui 29 mai 1900, à deux heures de l'après-midi, dans la Salle de la Trève.

Sont présents:

M.M. Dungs, Kriege, Schumacher, Töry, de Paepe, van den Bulcke, Matzen, Oliver y Esteller, Renault, Lainé, le baron Galvagna, Pierantoni, Thorn, Asser, Rahusen, Feith, Heemskerk, Ort, le comte de Selir, Missir, de Martens, Goussakowsky, de Hammarskjöld, Beichmann, Meili et Roguin.

Sont également présents:

Son Exc. M. de Beaufort, Ministre des Affaires Etrangères, et M. le Jonkheer van Beyma, Secrétaire Général du Ministère de la Justice.

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*) La première partie des matières de la troisième Conférence de la Haye, pour le Droit international privé, se trouve au volume précédent p. 26 s qus.

S. E. M. le Ministre des Affaires Etrangères, après avoir reçu M.M. les Délégués, prononce le discours suivant:

Messieurs,

Au nom du Gouvernement de S. M. la Reine des Pays-Bas, j'ai l'honneur de Vous souhaiter la bienvenue à La Haye et de Vous prier de vouloir agréer mes remercîments les plus cordiaux pour l'empressement avec lequel tous les Gouvernements ont bien voulu se rendre à l'invitation qui leur a été adressée par le Gouvernement Néerlandais. Si mes prédécesseurs, en Vous adressant la parole dans cette salle pour inaugurer Vos travaux, ont dû se contenter d'exprimer leurs meilleurs souhaits pour la réussite de Votre œuvre, j'ai le grand avantage de pouvoir cette fois Vous féliciter des succès déjà obtenus. Le traité du 14 novembre 1896, qui a été ratifié par tous les Hauts Gouvernements signataires, restera désormais un monument impérissable de Votre activité et de Votre zèle. Je suis convaincu qu'il ne sera pas le seul; en redoublant Vos efforts Vous parviendrez sans doute à établir un accord sur d'autres points du droit privé. Les questions dont Vous allez Vous occuper dans cette Conférence sont de la plus haute importance pour la vie sociale, mais en même temps elles sont hérissées de grandes difficultés. Vous ne reculerez pas devant ces difficultés, j'en suis sûr, au contraire elles serviront à stimuler Votre zèle. Ardua quæ pulchra, c'est bien là Votre devise.

La tâche qui incombe à la Conférence de droit international privé fait partie de cette grande œuvre à laquelle les hommes les plus éminents de tous les pays civilisés ne cessent de travailler, qui a pour but de faire entrer dans toutes les relations internationales tant entre Gouvernements qu'entre individus les principes du droit et de la justice. J'espère que Votre réunion présente fasse avancer cette grande et noble œuvre. En voyant ici tant d'hommes distingués par leurs talents et leur haute érudition, parmi lesquels il y en a plusieurs qui ont illustré plus d'une importante conférence internationale, je crois pouvoir augurer que cette espérance ne manquera pas d'être réalisée.

Permettez-moi en terminant de Vous faire part des vifs regrets de mon collègue le Ministre de la Justice qui est retenu à la Chambre par suite de la discussion d'un projet de loi de la plus haute importance et qui m'a prié de Vous exprimer l'assurance de sa profonde sympathie et de ses meilleurs vœux pour le succès de Votre Conférence.

M. le Comte de Selir, Ministre de Portugal, répond ainsi:

Messieurs,

Je suis très heureux d'être l'interprête de Vos sentiments en exprimant à Son Excellence M. le Ministre des Affaires Etrangères des Pays-Bas nos plus sincères remerciements pour les gracieuses paroles qu'il vient de nous adresser en nous souhaitant la bienvenue.

C'est, Messieurs, la troisième Conférence de droit international privé à laquelle nous allons collaborer sous les auspices du Gouvernement de Sa Majesté la Reine des Pays-Bas. Les deux premières ont donné des

résultats importants, celle-ci, j'en suis persuadé, sera aussi couronnée de succès, car nous réussirons certainement à établir les bases d'un accord, grâce au soin que Messieurs les membres de la Commission hollandaise ont mis à préparer le terrain.

Mais il n'est pas de mon intention d'entrer dans les détails de ce que nous avons fait et de ce que nous ferons, le Président de Votre choix le fera mieux et avec beaucoup plus de compétence que moi.

Messieurs, le Conseiller d'Etat M. Asser a présidé les deux premières Conférences avec une compétence tout-à-fait remarquable: je Vous proposerai de le replacer au fauteuil présidentiel, ce sera une garantie de plus pour la réussite de nos travaux.

En terminant, Messieurs, je tiens à Vous faire une seconde proposition.

Sa Majesté la Reine, qui nous offre l'hospitalité de Sa Résidence, se trouvant en villégiature hors du pays, je Vous proposerai d'envoyer à Sa Majesté une dépêche pour La prier de daigner agréer nos plus humbles et plus respectueux hommages.

M. Asser assume la présidence et s'exprime en ces termes:

Messieurs,

Vous avez bien voulu, sur la proposition de S. E. M. le Ministre de Portugal, m'appeler, pour la troisième fois, à la présidence de la Conférence de droit international privé. Je Vous suis profondément reconnaissant de cette marque de confiance et je remercie M. le Ministre des bonnes paroles qu'il a bien voulu prononcer. Je considère comme un très grand honneur de diriger les travaux de cette haute assemblée, composée des délégués de presque tous les Etats de l'Europe continentale, tous animés du désir sincère de poser les bases d'une entente internationale sur les matières importantes mentionnées dans notre Programme.

Lorsque pour la première fois cet insigne honneur m'a été conféré, la tâche me semblait bien difficile. L'expérience faite dans notre première réunion m'a donné du courage quand il s'agissait de présider la deuxième, et maintenant, permettez-moi de le dire, quand je pense à la grande bienveillance avec laquelle Vouz avez voulu seconder le Président dans l'accomplissement de sa tâche, à l'esprit de conciliation qui Vous a toujours animés dans Vos débats et surtout à Votre haute compétence en matière de droit international, qui Vous a permis d'obtenir dans un temps relativement court des résultats vraiment remarquables, je sens que les fonctions de Président de Vos réunions ne sont pas si difficiles à remplir.

C'est avec un bien vif plaisir que je vois parmi Vous, Messieurs, beaucoup de nos honorés collègues des Conférences antérieures. Je suis sûr que les nouveaux collègues que nous sommes heureux de saluer, travailleront avec nous dans le même esprit qui a toujours animé les membres de ces réunions.

Nous allons donc, Messieurs, poursuivre les travaux commencés en 1893 et en 1894. Si, au point de vue diplomatique, chaque réunion a été jusqu'à présent, traitée comme une conférence séparée, convoquée sur la

base d'un programme spécial, il importe, dans l'intérêt de notre œuvre, de ne pas perdre de vue la continuité, indispensable pour maintenir l'harmonie entre les différents projets élaborés par les Conférences qui se succèdent.

Je crois que jusqu'à présent on ne s'est pas écarté de cette voie.

Quand la première Conférence, convoquée en 1893, dans le but de préparer une entente à l'égard des principales matières de droit international privé, avait à se prononcer sur la méthode à suivre dans ce travail, elle se vit placée devant cette alternative:

Fallait-il adopter l'ordre systématique qu'observent les législateurs dans la rédaction des Codes nationaux, en posant d'abord des règles générales et en les faisant suivre de dispositions d'une nature spéciale?

Ou bien ferait-on mieux de s'occuper en premier lieu de quelques parties du droit à l'égard desquelles le besoin de règles uniformes pour la solution des conflits internationaux s'est fait le plus vivement sentir?

La Conférence a adopté le dernier système pour des motifs différents.

D'abord elle a cru que plusieurs législateurs hésiteraient peut-être à sanctionner, au moyen de formules générales, des principes de droit international privé; — tandis que des règlements concernant des matières spéciales et des questions concrètes, même s'ils impliquaient la reconnaissance de certains principes généraux, auraient plus de chance d'être ratifiés.

Ensuite elle a estimé qu'en commençant par la solution des conflits de droit par rapport à des questions d'une grande importance pratique, on parviendrait plus aisément à faire comprendre la haute utilité de l'œuvre entreprise, que si l'on s'occupait en premier lieu à formuler des règles d'une nature plus abstraite.

Guidée par ces motifs la Conférence de 1893 a choisi les quatre matières suivantes:

1° Le mariage;
2° Les successions et les testaments;
3° Ls compétence judiciaire et autres questions de procédure;
4° La forme des actes.

Cette dernière matière ne rentrait pas précisément dans le cadre choisi par la Conférence. Aussi a-t-on décidé plus tard, sur la proposition de M. Legrand, Ministre de France, que les règles arrêtées par rapport à la forme des actes ne figureraient pas dans le Protocole Final, mais seraient simplement insérées au procès-verbal.

La deuxième Conférence (de 1894) en continuant l'examen des matières discutées en 1893, y ajouta deux autres, la Tutelle et la Faillite, et compléta le projet concernant le Mariage par des règles touchant „les effets du mariage sur l'état de la femme et des enfants“ et touchant „le divorce et la séparation de corps“, tandis qu'au projet concernant la procédure civile furent ajoutées des dispositions par rapport à la cautio judicatum solvi, l'assistance judiciaire et la contrainte par corps.

Après la clôture de la deuxième Conférence, le Gouvernement des Pays-Bas avait à examiner quelles mesures devaient être prises pour faire accepter par les Gouvernements les projets votés par la Conférence et les faire sanctionner dans les différents Etats qui y avaient été représentés, soit au moyen d'une ou de plusieurs Conventions internationales soit par des lois nationales uniformes.

Après un mûr examen de la question, on résolut de détacher tout d'abord de l'ensemble des projets celui concernant la procédure civile et de proposer aux Puissances de conclure une convention à l'effet d'accorder force de loi dans les Etats représentés aux règles approuvées par la Conférence.

Des considérations de différente nature ont fait adopter ce système. La 3ième partie du Protocole Final de 1894 (Dispositions concernant la Procédure Civile) tout en présentant un véritable intérêt pratique, ne semblait pas de nature à soulever de bien graves objections de la part des Gouvernements. Puisqu'il s'agissait d'un premier essai de codification internationale du droit privé pour un grand nombre d'Etats, on a jugé prudent de ne pas trop compliquer les négociations en abordant toutes les parties du Protocole Final à la fois, mais de réserver les parties concernant le droit civil jusqu'après l'entrée en vigueur de la convention relative à la procédure civile.

Ce résultat n'a été obtenu qu'en 1899.

Au mois de novembre 1894 le Gouvernement des Pays-Bas avait communiqué le projet de traité, avec une note explicative, aux Puissances représentées à la Conférence. L'examen du projet par les différents Ministères a duré bien longtemps, surtout dans les Etats où une entente entre plusieurs départements était indispensable.

De la part de quelques-unes des Puissances la réponse affirmative fut reçue à La Haye dans un fort bref délai: d'autres suivirent après quelque temps. La Suisse ayant proposé une modification de l'article 11 de la Convention, concernant la cautio judicatum solvi (l'insertion des mots „ayant leur domicile dans un de ces Etats") cette proposition a dû être soumise aux autres Etats qui avaient déjà approuvé le projet. Ils adoptèrent l'amendement, mais l'Italie déclara qu'elle ne pouvait le faire que sous une réserve, formulée plus tard dans le Protocole Additionnel du 22 mai 1897.

La Belgique, l'Espagne, la France, l'Italie, le Luxembourg, les Pays-Bas, le Portugal et la Suisse signèrent la Convention du 14 novembre 1896.

Le 22 mai 1897 toutes les neuf Puissances que je viens de nommer signèrent un Protocole Additionnel, contenant, sauf la réserve mentionnée par rapport à l'article 11, quelques dispositions relatives à la ratification, l'entrée en vigueur et la dénonciation de la Convention.

Après la signature de ce Protocole Additionnel toutes les autres Puissances qui avaient été représentées aux Conférences adhérèrent successivement de la Convention et au Protocole additionnel.

Les dernières adhésions (celles de la Roumanie et de la Russie) furent reçues à La Haye le 30 décembre 1897, un jour avant l'expiration du terme fatal.

Bien que d'après l'article I des Dispositions Finales et le Protocole Additionnel, le dépôt des ratifications eût pu avoir lieu dès que la majorité des Etats contractants fût en mesure de le faire, on préféra de faire opérer le dépôt simultanément par tous les Etats.

Le procès-verbal du dépôt des ratifications fut signé dans cette même salle le 27 avril 1899 et en vertu d'une clause du Protocole Additionnel ce fut quatre semaines après cette date — le 25 mai 1899 — que la Convention relative à la procédure civile entra en vigueur.

Depuis ce jour la Convention est appliquée par nos tribunaux, sans que son application ait donné lieu à des difficultés.

Je dois cependant signaler ici un doute qu'a fait naître la première partie de la Convention relative à la communication d'actes judiciaires et extra-judiciaires.

Dans la Première Chambre de nos Etats Généraux la Convention n'a été votée qu'après un débat intéressant entre les Ministres et quelques Sénateurs, qui avaient cru lire dans cette partie de la Convention que les Etats qui ont sanctionné dans leurs Codes de Procédure Civile le système français de la signification au parquet des assignations et autres exploits destinés à des personnes résidant à l'étranger, seraient obligés de remplacer ce système par celui qui est en vigueur en Allemagne et ailleurs, d'après lequel l'exploit est transmis par l'intermédiaire des autorités pour être signifié au destinataire.

Dans le premier système la signification est censée accomplie au moment de la remise de l'exploit au parquet, — dans le second système seulement lors de la remise au destinataire.

Quand il s'agit d'une assignation en justice le premier système est donc le plus favorable au demandeur, le second au défendeur.

Les Ministres et notamment le Ministre de la Justice M. Cort van der Linden ont constaté et démontré que la convention n'avait nullement la portée de modifier le système en vigueur dans chaque Etat contractant par rapport à la signification des exploits, que, dans sa première partie, elle ne fait qu'imposer aux Gouvernements l'obligation de prêter leur concours pour la communication de ces actes aux destinataires, sans préjuger la décision de la question qui doit être résolue par le droit national de chaque Etat, quel est le caractère juridique de cette communication.

Les règles posées par la Convention sont de nature à être adaptées aux deux systèmes de signification.

A l'égard des Etats, qui ont adopté le système français, la communication a pour but de faire parvenir au destinataire un exploit, qui lui a déjà été légalement signifié par la remise au parquet, et à l'égard des Etats qui ont adopté le système allemand, elle a pour but de faire opérer la signification légale par la remise au destinataire. On peut donc dire que dans le premier système l'intervention des Gouvernements est

surtout utile dans l'intérêt du destinataire, dans le second, au contraire, dans intérêt du requérant.

Ce qu'on lit dans les Actes des Conférences au sujet de cette partie de la Convention, me semble suffisant pour écarter tout doute à l'égard de l'intention des rédacteurs.

L'interprétation donnée par le Gouvernement des Bays-Bas est en parfaite harmonie avec celle qu'on trouve dans les exposés dont les Gouvernements de France, de Belgique et de la Confédération Suisse ont fait accompagner la Convention lorsqu'elle a été présentée aux Parlements, et, en tant que j'ai été à même de m'en convaincre, nulle part une interprétation en sens contraire n'a prévalu.

Il me semble aussi que le texte des articles est suffisamment clair.

Cependant, puisqu'un doute a été émis par des jurisconsultes distingués, on pourrait, quand il s'agira de reviser la Convention (qui n'a été conclue que pour une durée de cinq ans et qui probablement sera complétée par l'insertion d'autres règles coucernant la procédure (examiner s'il conviendrait d'ajouter quelques mots ou de modifier quelques expressions pour écarter définitivement le doute que je viens de signaler.

Le Gouvernement des Pays-Bas bien que reconnaissant que la Convention, après avoir été approuvée par les Chambres et ratifiée par S. M. la Reine, pouvait entrer en vigueur sans l'intervention ultérieure des législations, a toutefois jugé utile de formuler dans un projet de loi plusieurs dispositions destinées à régler l'exécution de la Convention notamment en ce qui concerne la communication des actes, les commissions rogatoires et la procédure à suivre pour l'exécution des jugements rendus dans les procès où l'étranger demandeur ou intervenant a été dispensé de la caution judicatum solvi.

Ce projet de loi a été, lors de l'examen dans les sections de la Deuxième Chambre, l'objet d'assez vives critiques. Plusieurs membres ont contesté la nécessité et même l'opportunité d'une loi spéciale pour l'exécution de la Convention et ont demandé au Ministre ce qu'on avait fait à cet égard dans les autres Etats. Le Ministre a promis de prendre des informations à ce sujet et de communiquer à la Chambre le résultat de l'enquête qui serait instituée.

Jusqu'à présent cette communication n'a pas encore été faite.

En attendant les travaux préparatoires de cette troisième Conférence furent continués.

Dans le but d'atteindre des résultats pratiques sans trop de retard, le Gouvernement des Pays-Bas résolut d'instituer une Commission spéciale, chargée des travaux préparatoires.

Trois des autres Gouvernements qui avaient été représentés aux Conférences, ceux de Belgique, de France et de Russie, suivirent l'exemple des Pays-Bas et instituèrent également des Commissions, sous la présidence de M. de Lantsheere, de M. Renault et de M. de Martens.

Le Projet de Programme pour la troisième Conférence fut adressé à tous les Gouvernements représentés à la deuxième Conférence.

Ce Projet de Programme contenait les avant-projets qui avaient été votés par la deuxième Conférence par rapport au Mariage et ses effets sur l'état de la femme et des enfauts, au Divorce et à la Séparation de Corps, à la Tutelle et aux Successions et Testaments. Nous y avons ajouté des dispositions relatives aux effets du mariage sur les biens des époux. En outre nous avons cru devoir proposer quelques modifications aux dispositions votées par rapport aux autres matières.

Les Gouvernements à qui ce Projet de Programme fut présenté, furent invités à nous faire connaître les observations auxquelles le projet leur donnerait lieu.

Ils ont répondu à cet appel de la manière la plus gracieuse, et nous avons eu le bonheur de recevoir successivement une série d'amendements formulés par le Gouvernement Impérial Allemand, des notes du Ministère Royal Hongrois de la Justice, de la Commission Belge pour le droit international privé, du Gouvernement Royal du Danemark, de la Commission Française pour le droit international privé du Gouvernement Royal d'Italie, du Gouvernement Impérial de Russie, dn Ministère Royal de la Justice de Norvège, enfin des mémoires respectivement rédigés et signés par M. Oliver y Esteller et par M. Missir et offerts par les Gouvernements Royaux d'Espagne et de Roumanie.

Bien que le Gouvernement de la Confédération Suisse ne nous ait pas envoyé une note officielle, contenant ses observations, je suis heureux de constater que l'honorable délégué suisse M. Meili a bien voulu, dans un écrit des plus intéressants: Das Internationale Privatrecht und die Staatenkonferenzen im Haag (Zurich 1900) développer ses opinons personnelles au sujet des matières à régler.

Notre Commission Royale a examiné avec le plus grand soin toutes les notes des divers Gouvernements et les amendements qu'elles contiennent. Elle a pu constater la haute importance des observations qu'on y trouve développées et elle est convaincue que ce travail préparatoire sera de la plus grande valeur pour faciliter à la Conférence l'accomplissement de sa tâche. Notre Commission a réuni tous ces documents dans un fascicule, qui vers la moitié du mois de mars de cette année a été adressé à tous les Gouvernements représentés. Nous nous sommes permis de faire imprimer en regard des amendements, les observations de notre Commission et nous avons fait imprimer à la fin du recueil une Note concernant la question du renvoi.

Les Gouvernements d'Allemagne, d'Autriche et de Suède, après avoir reçu le recueil, ont bien voulu nous faire parvenir des Notes fort intéressantes, contenant leur avis tant sur le Projet de Programme que sur les amendements.

Ces Notes viennent d'être imprimées et distribuées à Messieurs les Délégués.

On peut prévoir dès à présent qu'en discutant les dispositions concernant le mariage, la Conférence se verra placée devant cette grande question, si les prohibitions établies par la loi des époux doivent

empêcher le mariage, même si elles sont contraires au droit public du pays de la célébration.

Notre Commission a pensé que, pour bien se rendre compte de la portée de la question et de la réponse à y donner, là où il s'agit non pas de poser des règles d'une application générale, mais de la rédaction d'un traité destiné à être signé par un nombre limité d'Etats, il serait utile de posséder un aperçu complet des dispositions législatives en vigueur dans chacun des Etats représentés par rapport aux prohibitions de contracter mariage.

C'est pourquoi nous avons prié les Gouvernements de vouloir bien faire dresser un aperçu de cette nature. Presque tous les Gouvernements ont déjà eu l'obligeance de satisfaire à notre désir. Il ne nous manque plus que l'aperçu de la législation russe qui, je l'espère, nous sera bientôt communiqué. Nous serons alors en mesure de Vous présenter un tableau complet des dispositions législatives concernant cette matière dans tous les Etats représentés.

Après Vous avoir donné un court aperçu de ce qui a eté fait pour préparer Vos travaux, permettez-moi d'exprimer l'espoir que Vos discussions auront pour résultat d'établir un accord satisfaisant à l'égard des points qui semblent encore nous diviser. J'ai la ferme conviction que nous y parviendrons.

N'oublions pas que les concessions réciproques nécessaires à cet effet seront d'autant plus faciles à faire, qu'il ne s'agit pas ici de poser les règles du droit civil même. Chaque Etat conserve à cet égard la plus complète autonomie. Il ne s'agit que de la désignation de la loi applicable dans les cas douteux.

A cet égard le sacrifice partiel de nos opinions de jurisconsultes sur l'autel de l'harmonie internationale nous coûtera moins d'efforts que s'il s'agissait de modifier les bases mêmes de notre législation civile.

Vous aurez à décider d'après quelle méthode Vous travaillerez pour atteindre le but. Permettez-moi de Vous dire qu'à mon avis il importe surtout d'établir une entente par rapport aux principes fondamentaux; que pour les détails, ou plutôt pour l'application des principes à des matières spéciales, il serait sage, dans beaucoup de cas, de laisser se former une jurisprudence sur la base des principes arrêtés, pour dégager dans la suite de cette jurisprudence arrêtée les dispositions légales ou conventionnelles concernant les détails.

Cette jurisprudence aura nécessairement un caractère international, puisqu'elle aura pour point de départ les règles arrêtées d'un commun accord par les différents Etats.

Vous déciderez également, si, en dehors des matières importantes, qui Vous ont déjà occupés dans les Conférences précédentes, il convient d'aborder l'examen des règles à établir par rapport à d'autres parties du droit. En ce cas des avant-projets pourraient être préparés, pour être revisés et définitivement arrêtés dans une prochaine Conférence.

Je puis dès à présent annoncer à la Conférence que M. Roguin, l'honorable Délégué de la Confédération Suisse, a bien voulu nous faire

parvenir deux projets d'une haute importance, concernant l'un les droits réels l'autre les obligations. Ces projets, ainsi que les exposés des motifs, sont imprimés et j'aurai l'honneur de Vous consulter sur la question de savoir s'il convient de les mettre à l'ordre du jour de la Conférence.

On a aussi appelé mon attention sur l'utilité qu'il y aurait à compléter le projet concernant la tutelle des mineurs, par des règles concernant celle des majeurs; on ne saurait méconnaître l'analogie qui existe entre les deux institutions.

Qu'il me soit permis avant de terminer ce discours déjà beaucoup trop long, d'ajouter encore quelques mots au sujet de deux autres matières, dont l'une a déjà fait l'objet de Vos discussions et d'un avant-projet de convention arrêté par la deuxième Conférence, tandis que l'autre avait déjà été indiquée dans la première Conférence comme une matière à régler.

Je veux parler de la faillite et de la compétence des tribunaux ratione personae et territorii.

Vous Vous rappelez que, lorsque en 1894 je proposais de nous occuper de la faillite au point de vue international, certaines réserves furent faites par nos honorables Collègues belges qui annoncèrent que le Congrès se réunissant l'année suivante (1895) à Bruxelles serait saisi de cette matière importante. Les honorables Délégués déclarèrent se borner à cette réserve et ne pas proposer à la Conférence d'écarter de son ordre du jour les questions concernant la faillite.

Un avant-projet a alors été rédigé.

Vous aurez à décider maintenant si vous voulez en reprendre l'examen.

Quant aux règles concernant la compétence internationale, le sujet a été provisoirement écarté puisqu'on était d'avis qu'il fallait introduire dans chaque projet concernant une matière particulière les règles relatives à la compétence.

Il serait cependant utile d'examiner si ces dispositions spéciales rendent superflu un règlement général relatif à la compétence. Ce règlement serait applicable aux contestations concernant des matières qui ne font pas l'objet d'une convention internationale.

Et maintenant, Messieurs, commençons immédiatement nos importants travaux.

Je puis dire que nous le faisons, remplis de foi dans l'avenir de notre œuvre.

Nous savons que toutes les Puissances qui prennent part à la Conférence par les hommes éminemment compétents qu'Elles ont délégués, sont convaincues de la haute utilité d'une entente qui consolidera les bases du droit privé dans les relations internationales.

Nous savons que dans le domaine de ce droit privé, c'est leur ferme et sincère désir de maintenir la justice, sans jamais la subordonner à des considérations d'intérêt, de quelque nature qu'elles soient.

C'est cette conviction, Messieurs, qui nous soutient dans l'accomplissement de notre tâche.

Nous travaillons et nous discutons sans méfiance et sans arrière-pensée et chacun de nous est heureux quand il trouve une solution propre à concilier des opinions divergentes.

Dans nos travaux nous n'oublierons pas les éloquentes paroles que S. E. le Ministre des Affaires Etrangères vient de nous adresser: nous remercions Son Excellence ainsi que Monsieur le Secrétaire Général du Département de la Justice de leur présence et nous regrettons que Son Exc. le Ministre de la Justice se soit vu empêché par les travaux parlementaires d'assister à cette séance.

Je suis sûr de parler au nom de Vous tous quand je prie Leurs Excellences ainsi que Leurs Excellences les Ministres de Portugal, de France et d'Italie de vouloir bien être les Présidents d'honneur de la Conférence et quand j'invite Messieurs le premier Délégué d'Allemagne, le Délégué de Hongrie et le premier Délégué de Russie d'accepter les fonctions de Vice-Présidents de la Conférence.

Quant à la composition du Secrétariat je me permets de vous faire les propositions suivantes:

1° de charger de la direction du Secrétariat en qualité de Premier Secrétaire M. le jonkheer Rochussen, chef de bureau au Ministère des Affaires Etrangères, qui remplit avec beaucoup de zèle et de dévouement les fonctions de secrétaire de notre Commission Royale pour le droit international privé;

2° de nommer Secrétaires de la Conférence Messieurs:

le jonkheer F. Beelaerts de Blokland, sous-chef de bureau à la Direction générale des Postes et des Télégraphes, C. van Vollenhoven, sous-chef de bureau au Ministère des Colonies, le jonkheer T. R. J. E. Stoop, avocat, et le jonkheer H. A. van Karnebeek.

Ces propositions sont adoptées par la Conférence.

M. Renault présente les excuses de M. de Monbel, Envoyé extraordinaire et Ministre plénipotentiaire de la République Française à La Haye et Délégué dc France à la Conférence, qui retenu à Paris n'a pu, à son grand regret, assister à cette séance.

Son Excellence Monsieur le Ministre des Affaires Etrangères s'étant retiré, ainsi que Monsieur le Secrétaire Général du Ministère de la Justice,

le Président dit qu'il lui semble important d'avoir aujourd'hui, avant le commencement des travaux proprement dits, un échange de vues qui facilitera la décision à prendre quant aux questions suivantes: quels seront les sujets que la Conférence abordera, quel système suivra-t-elle dans l'examen des différentes matières et en général quel sera l'ordre des travaux?

La question qui se pose tout d'abord est celle de savoir si l'on se bornera aux matières indiquées dans le Projet de Programme ou bien s'il ne pourrait être utile d'étendre les limites des délibérations.

Le Président croit qu'il vaudrait mieux ne pas se borner aux sujets contenus dans le Projet de Programme. Cette troisième Conférence s'en occupe pour la dernière fois, son but est d'arrêter des projets définitifs. Il aura fallu une longue préparation pour obtenir ce résultat. C'est pourquoi il serait utile d'aborder dès à présent l'examen de quelques autres matières non mentionnées dans le Projet de Programme. Toutefois ces discussions ne seront par leur nature même que des délibérations préalables. Il s'agirait de poser les bases des travaux ultérieurs.

M. le Comte de Selir demande si le programme de la Conférence, soumis à l'appréciation des différents Gouvernements par celui de S. M. la Reine des Pays-Bas, ne paraît pas assez étendu. Il croit qu'il serait préférable de se limiter d'abord à ce programme.

Le Président fait remarquer que si la Conférence n'entame pas de matières nouvelles, l'occasion d'arrêter des avant-projets, nécessaires pour les travaux de l'avenir, fera défaut.

M. de Martens estime qu'il y aurait des inconvénients à élargir maintenant le programme de la Conférence en abordant des questions non préparées sur lesquelles les Délégués n'ont pas reçu d'instructions. Il se formerait une séparation des matières. L'important recueil des „Documents relatifs à la troisième Conférence", élaboré par la Commission néerlandaise et communiqué aux différents Gouvernements, a mis les Délégués à même d'énoncer d'une manière définitive les vues de leurs Gouvernements par rapport aux questions comprises dans le Projet de Programme.

Mais si la Conférence s'occupait de matières non préparées la discussion, tout intéressante qu'elle serait, devrait forcément rester purement académique et théorique; les résolutions sur cette matière devraient être envisagées par les Gouvernements et par les bureaux d'un autre point de vue que celles se rapportant au Projet de Programme. Il paraît donc mieux pour le moment se borner à l'ordre du jour.

MM. les Délégués d'Allemagne, d'Autriche, de Hongrie et d'Italie déclarent partager l'opinion de M. de Martens.

Le Président dit qu'il comprend parfaitement la gravité de l'objection présentée par son éminent collègue M. de Martens. Cependant il fait remarquer qu'il y a une matière déjà discutée et sur laquelle il existe un avant-projet, à savoir la faillite. Si un obstacle qui s'était présenté à la dernière Conférence et avait été signalé par les honorables Délégués de la Belgique n'existait plus actuellement, il ne croit pas qu'il y ait un motif pour ne point continuer les travaux déjà commencés sur cette matière.

M. van den Bulcke, au nom des Délégués belges, reconnaît qu'en effet, dans la Conférence de 1894, il a été demandé que la matière de la faillite fut réservée au Congrès de Droit Commercial qui devait se réunir l'année suivante à Anvers. Pour des raisons qui n'ont rien de commun avec l'objet des délibérations de la Conférence, ce Congrès n'a pu se réunir. L'obstacle a donc disparu. La Belgique a d'ailleurs tout récemment introduit une disposition sur la faillite dans un traité avec la France. Elle est prête à négocier sur les mêmes bases avec les autres

Etats représentés à la Conférence. Elle a même pensé que le traité avec la France serait un premier jalon posé dans cette voie.

M. de Martens fait ressortir la différence entre le caractère préparatoire des Conférences de 1893 et 1894 et celui de la présente Conférence dont l'œuvre a été préparée. Aussi les Délégués russes sont en état de prononcer par rapport aux matières comprises dans le programme de cette Conférence non seulement une opinion personnelle, mais celle du Gouvernement impérial, sans toutefois lier celui-ci. Quant aux matières non préparées, M. de Martens persiste à croire que la discussion ne pourra avoir qu'un caractère académique parce que les Délégués ne pourraient émettre que leurs vues personnelles.

Le Président répond que personne ne méconnaît cette différence, mais il estime qu'il y a aussi une différence entre une discussion académique — expression qu'il ne voudrait pas appliquer aux débats de la présente Conférence — et un échange de vues, même personnelles, des Délégués de tous les Etats représentés dans cette assemblée.

M. Roguin tient à appuyer au nom de la Délégation suisse l'opinion de M. le Président de la Conférence. Il convient de faire progresser l'œuvre entreprise en abordant les autres questions du droit civil international. Si la Conférence étudiait encore les matières des droits réels, des obligations, de la filiation légitime et illégitime et de la tutelle des majeurs, tout le champ du droit international privé aurait été travaillé. Les nouveaux avant-projets suivraient le sort des précédents et s'acheminerait peu à peu vers un état définitif. L'œuvre de la Conférence n'est que commencée; il importe de la terminer progressivement.

Le Président demande comment il sera possible de préparer le travail futur si l'on ne suit pas la méthode appuyée si éloquemment par M. Roguin? Il faudrait alors qu'un Gouvernement non seulement fît le choix des matières sur lesquelles portera ce travail, mais préparât aussi des avant-projets aptes à servir de base à l'examen des Gouvernements.

M. Pierantoni estime qu'il s'agit d'abord de finir le travail soumis à la Conférence par le Gouvernement des Pays-Bas; plus tard la Conférence pourra, et il y applaudirait, s'occuper de travaux préparatoires. Et là il faudra distinguer entre la matière de la faillite, insérée déjà au protocole final de la dernière Conférence, et les projets nouveaux comme ceux de M. Roguin.

M. de Martens est assuré que personne ne doutera de son ardeur à pousser plus loin la codification du droit international privé. Mais il croit que, si la Conférence mêlait les sujets nouveaux aux autres, les bureaux oublieraient la différence essentielle entre le caractère des deux espèces de matières. C'est ainsi que le travail préparatoire mettrait en danger le travail définitif et pratique. Dans l'intérêt de l'œuvre, commune, il insiste sur l'importance d'observer cette différence.

Le Président signale le grand inconvénient qui en résulterait si la Conférence adoptait les vues de M. de Martens. Le Gouvernement des Pays-Bas, s'il désirait prendre l'initiative d'une nouvelle réunion, pourrait

hésiter devant la tâche de choisir les matières et de préparer les avant-projets. Dans ces conditions il aurait peut-être des scrupules à être derechef le premier pour s'adresser aux autres Gouvernements.

M. de Martens répond que, quant aux matières que les Gouvernements ne se sont point mis d'accord de traiter, la Conférence pourrait, à l'instar de ce qui a été fait à la Conférence de la Paix, émettre le vœu d'un examen par une Conférence ultérieure. Un tel vœu toutefois ne saurait engager les Gouvernements.

M. Rahusen, tient à faire une proposition conciliatrice en ce sens que la Conférence après avoir discuté l'ensemble du programme, se livre à un échange de vues sur les questions non comprises dans ce programme, afin de présenter aux Gouvernements un travail préparatoire pouvant servir pour la continuation de l'œuvre entamée.

M. Missir appuie cette proposition.

Le Président propose de confier à une commission spéciale le soin de choisir les questions qui formeraient l'objet d'un examen ultérieur et d'indiquer, en lignes générales, la direction que prendra l'étude des matières choisies.

M. le Comte de Selir demande si cette commission devra aussi s'occuper de la faillite.

M. Lainé est d'avis qu'il serait plus pratique de ne point instituer dès maintenant cette commission spéciale. Mieux vaudrait que les commissions, entre lesquelles sera repartie la tâche de la Conférence, finissent d'abord leur travail.

Le Président fait observer que les travaux sur le Projet de Programme demanderont un temps assez considérable et que par conséquent il serait utile de nommer à présent cette commission spéciale, afin qu'elle puisse commencer sans retard ses importants travaux.

La Conférence se range à l'avis du Président.

Le Président demande combien de commissions la Conférence désire instituer et comment on divisera le travail.

La matière du mariage s'est développée considérablement depuis les Conférences antérieures. Une seule commission suffira-t-elle ou préférerait-on la diviser en deux ou trois commissions?

M. de Martens se prononce en faveur d'une seule commission, les différentes questions relatives au mariage étant intimement liées entre elles. Les membres de cette commission, qui devrait être nombreuse, pourraient au besoin partager entre eux les différents sujets.

M. Heemskerk se rallie à l'opinion émise par M. le premier Délégué de Russie. Il estime avec M. de Martens que les questions sont trop liées ensemble pour les séparer. Et il importe que la commission soit composée d'un assez grand nombre de Délégués pour que les différentes opinions s'y trouvent représentées et qu'on puisse tâcher de s'accorder déjà au sein de la commission.

M. le Compte de Selir recommande de ne pas former un trop grand nombre de commissions, comme il y a des Gouvernements qui ne sont représentés que par un seul Délégué.

M. Missir propose d'instituer deux commissions pour le mariage: une pour les questions de statut personnel, déjà amplement étudiées; une autre pour la matière tout à fait nouvelle des effets du mariage sur les biens des époux.

Le Président fait observer que si l'on nommait une seule commission pour le mariage celle-ci pourrait se diviser en deux sous-commissions.

M. Kriege désirerait qu'une sous-commission s'occupât de la section a: „conditions pour la validité du mariage“ et de la section c: „divorce et séparation de corps“, tandis qu'une seconde sous-commission étudierait les questions relatives aux effets du mariage sur l'état de la femme et des enfants ainsi que sur la capacité de la femme et les biens des époux.

La Conférence adopte le système d'une grande commission pour le mariage qui se divisera en sous-commissions si elle le juge nécessaire.

M. Lainé observe que l'on doit bien distinguer: 1° le mariage et ses effets naturels et 2° tout ce qui dépend de la volonté des parties c'est à dire le contrat de mariage, matière qui tient à la théorie générale des contrats.

Le Président propose de former une commission spéciale pour les successions et une autre pour la tutelle. Il rappelle que le désir a été exprimé de compléter ce sujet en traitant aussi de la tutelle des majeurs.

Une quatrième commission aurait le mandat d'examiner les matières nouvelles, que l'on voudrait recommander à l'étude ultérieure des Gouvernements.

Enfin le Président suggère de nommer un comité central de rédaction qui recevra les rapports et établira l'harmonie entre les textes arrêtés.

Ces propositions sont adoptées.

M. de Martens émet l'opinion que les commissions devront elles-mêmes décider si elles jugent bon d'aborder des questions nouvelles se rattachant à celles qui forment leur tâche principale. Les Délégués pourront dans ce but faire leurs propositions à la commission sans que la Conférence ait confié à celle-ci un mandat spécial; c'est ainsi que pourra procéder notamment la commission pour la tutelle en ce qui concerne l'interdiction des majeurs.

Le Président estime qu'il n'est pas nécessaire de dresser des procès-verbaux les séances de commission.

M. Renault est du même avis. Le rapporteur doit faire état des opinions différentes émises dans la commission et son rapport donnera le résumé des discussions.

La Conférence adopte cette manière de voir.

Le Président propose de remettre à la séance du lendemain, la répartition des membres entre les différentes commissions.

Ensuite il propose d'aborder en séance plénière la discussion générale sur chaque matière avant que celle-ci soit traitée dans la commission. Cette manière de procéder permettrait à la commission de connaître les vues des Délégués qui n'en font pas partie.

M. Renault demande si chaque membre pourra se faire inscrire pour plusieurs commissions.

On est d'accord qu'en dehors des Délégués spécialement désignés, tous les Délégués auront le droit d'assister aux séances des Commissions et d'y prendre part aux délibérations. Toutefois, le droit de vote sera réservé exclusivement aux membres d'office.

M. Lainé demande si l'échange de vues préalable suggéré par le Président ne devrait pas porter en premier lieu sur une question d'un ordre général et qui domine tous les différents projets du Programme. C'est la question de savoir quelle loi régira le statut personnel, la loi nationale, qui forme la base prépondérante des projets, ou la loi du domicile. Il importerait de poser la question préjudicielle si les Délégués sont disposés à faire des concessions à la loi du domicile.

Le Président, tout en admettant que la question est fondamentale, dit qu'il lui semble préférable de la trancher quand elle se présentera dans chaque matière spéciale.

M. Roguin demande s'il est bien entendu que les Délégués qui ne font pas partie de telle ou de telle commission, ont la faculté de lui remettre par écrit leurs vœux et leurs observations sur la matière qu'on y examine. Il y tiendrait spécialement, le Gouvernement Suisse n'ayant pu à son grand regret faire parvenir ses observations sur le Projet de Programme au Gouvernement Néerlandais.

Le Président répond affirmativement.

M. Renault attacherait un grand prix à être renseigné dès maintenant sur les vues du Gouvernement Fédéral.

M. Meili répond que, quoique son Gouvernement ne se soit pas prononcé jusqu'ici, les Délégués Suisses sont en possession d'instructions précises sur chaque matière. A l'occasion de la discussion générale M. Meili déférera volontiers au désir qu'a exprimé M. Renault. Il exposera succinctement les vues de son Gouvernement, notamment sur la question qui a attiré son attention particulière: ne serait-il pas désirable de faire place en quelque mesure à la loi du domicile et d'apporter certaines restrictions à la prééminence de la loi nationale qui forme le point de départ du Projet de Programme.

Le Président propose à la Conférence de se réunir le lendemain à 10 heures du matin afin de procéder en premier lieu à la constitution des commissions.

Cette proposition est adoptée.

La séance est levée à $4^1/_4$ heures.

Le Président:
Asser.

Le Premier Secrétaire:
J. J. Rochussen.

Les Secrétaires:

Beelaerts de Blokland. *T. R. J. E. Stoop.*
C. van Vollenhoven. *H. van Karnebeek.*

Procès-verbal n° 2. (Séance du 30 mai 1900.)

La séance est ouverte à 10 heures.

Sont présents:

M.M. Asser, Président, Dungs, Kriege, Schumacher, Töry, de Paepe, van den Bulcke, Matzen, Oliver y Esteller, Renault, Lainé, le baron Galvagna, Pierantoni, Thorn, Feith, Heemskerk, Ort, le comte de Selir, Missir, de Martens, Goussakowsky, de Hammarskjöld, Beichmann, Meili et Roguin.

Le Président fait part à la Conférence que M. Rahusen, obligé d'assister à la séance de la Première Chambre, ne pourra prendre part aujourd'hui aux travaux de la Conférence.

Le Président propose ensuite de ne pas lire en séance les procès-verbaux. Le Secrétariat fera parvenir dans le plus bref délai possible une épreuve de chaque procès-verbal à MM. les Délégués qui sont priés d'y inscrire les corrections qu'ils jugeront nécessaires et de la renvoyer dans les trois jours au Premier Secrétaire.

Le Président donne lecture de la dépêche suivante que Sa Majesté la Reine des Pays-Bas a daigné lui adresser en réponse au télégramme d'hommage de la Conférence:

„Veuillez transmettre à la Troisième Conférence de Droit International Privé Mes remerciments sincères pour l'expression de ses hommages et y ajouter tous Mes vœux pour la réussite de ses travaux."

(s.) *Wilhelmina.*

Le Président prie la Conférence de procéder à un échange de vues d'une nature générale et provisoire sur le Projet de Programme. A cette fin il lui semble préférable de ne pas aborder le Projet de Programme dans son ensemble, mais d'en discuter les subdivisions séparément.

Cependant, M. Meili voudra bien d'abord, comme il l'a promis dans la première séance, exposer les vues du Gouvernement Fédéral quant au Projet de Programme considéré dans son ensemble.

La manière de procéder proposée par le Président est adoptée.

M. Meili prononce le discours suivant:

Le Gouvernement Suisse, tout en se réservant la libre appréciation des décisions qui seront prises, a chargé sa Délégation de soumettre à la Conférence quelques observations. Je suis heureux d'avoir l'occasion de le faire avant que les différentes Commissions se mettent à l'œuvre, d'autant plus que par un fâcheux concours de circonstances la Suisse ne s'est pas prononcée du tout sur les projets. Ces observations se rattachent aux points suivants:

I. Dans l'état actuel de la législation suisse c'est la loi du domicile qui domine dans les conflits du droit international et intercantonal. C'est à titre d'exception que la loi nationale est acceptée ou plutôt est tolérée. Les dispositions qui déterminent cette situation sont les suivantes:

En premier lieu l'article 46 de la Constitution fédérale ainsi conçu:

„Les personnes établies en Suisse sont soumises dans la règle à la juridiction et à législation du lieu de leur domicile en ce qui concerne les rapports de droit civil."

Secondement la Loi Fédérale du 25 juin 1891 sur les rapports de droit civil des citoyens établis ou en séjour.

Il en résulte que la Suisse est dans une situation particulièrement difficile quand il s'agit de savoir si elle pourrait accepter les différents projets qui sont conçus dans le Programme élaboré par le Gouvernement des Pays-Bas et qui ont tous pour base la loi nationale.

Mais notre pays n'a nullement la prétention de persister dans l'Etat actuel de sa législation, si les autres Etats adoptent la loi nationale. Je m'empresse cependant d'ajouter qu'il faudrait au moins faire des concessions à la loi du domicile. En d'autres mots il y aurait lieu de restreindre le domaine de la loi nationale dans une certaine mesure et de rechercher la sententia media que j'ai exposée dans ma brochure*). En effet, il y a des raisons urgentes qui parlent pour cette solution, savoir:

1° La nature des choses. En respectant uniquement la loi nationale on retomberait dans cette période historique où chacun professait le droit de sa race. Il y a quelques siècles que quelqu'un a dit: quand cinq personnes sont ensemble chacune d'elles est soumise à une autre loi. Je reconnais bien que c'est un peu exagéré, mais cette hypothèse peut certainement se réaliser dans les temps modernes. Pensez aux pays où il y a beaucoup d'étrangers;

2° L'exemple de l'Allemagne. L'Allemagne n'a pas adopté purement la loi nationale. Au contraire, l'article 27 de la loi d'Introduction du Code Civil tempère par rapport aux questions concernant la capacité, le mariage, le divorce, les biens des époux et les successions la prééminence de la loi nationale en réservant la possibilité qu'un autre Etat reconnaissance la loi du domicile. Toutefois ce système qu'on a appelé celui du renvoi a été attaqué;

3° La Conférence internationale elle-même a trouvé qu'il vaudrait mieux faire des concessions à la loi du domicile: l'article 1 des dispositions sur le mariage autorise le recours à la loi du domicile. Eh bien! Continuons dans cette direction en tâchant de faire un travail de combinaison. Si l'on donne ici une place à la loi du domicile, faut-il la repousser ailleurs?

4° Pourquoi forcer les peuples d'adopter la loi nationale, quand il y a moyen de combiner les deux principes? Si l'on ne s'attache pas à obtenir ce dernier résultat, les peuples répondront par un autre procédé très peu désirable; ils forceront par la loi les étrangers à se faire naturaliser ou devenir indigènes. La Suisse donne un tout autre exemple

*) Il s'agit de la publication: „Das internationale Privatrecht und die Staatenkonferenzen im Haag (Zürich 1900)", que M. le Président Asser a mentionné dans son discours-d'ouverture.

en laissant exister les liens de droit public qui lient à leur propre pays les étrangers domiciliés en Suisse.

II. Il s'agit maintenant de savoir si l'on trouve un moyen de mettre la sententia media en harmonie avec les différentes législations. Cette question doit être résolue dans le sens affirmatif.

Il y a même plusieurs solutions auxquelles on pourrait penser:

1. On pourrait fixer un laps de temps, par exemple de 10 ans, après lequel les étrangers seraint soumis à la loi du domicile.

2. En rattachant les effets de la loi du domicile à la naissance, cette loi pourrait être admise à régler les rapports internationaux de ceux qui sont nés sur le territoire.

3. Enfin on pourrait s'appliquer à distinguer aussi soigneusement que possible sur quel terrain la loi nationale doit prévaloir et sur lequel il faudra tenir compte de la loi du domicile.

La dernière solution m'est personnellement la plus sympathique et elle me paraît la plus conforme à la doctrine.

III. Passons maintenant à l'application concrète.

1. Quant au règlement du mariage il est donné satisfaction à notre point de vue (voir l'article 1er).

2. Par rapport au divorce il ne s'agit que de se faire inspirer par les conclusions de l'Institut de Droit International; on ne doit point oublier que la Conférence de 1894 n'a repoussé le système préconisé par l'Institut qu'à une faible majorité.

3. En ce qui concerne le régime des biens matrimoniaux il faudrait absolument, si l'on désire accepter sans exceptions la loi nationale, introduire des registres obligatoires des régimes nuptiaux à l'effet de protéger les droits des tiers, ce qui me semble tout-à-fait indispensable.

4. Quant à la tutelle le projet respecte la loi du domicile dans une certaine mesure. Il est presque illogique de ne pas faire la même chose dans les autres matières.

5. Enfin, dans la matière des successions, il y a une très heureuse combinaison qui pourrait être recommandée à la Commission.

Je Vous fais remarquer que la Suisse a trouvé une solution, indiquée dans l'article 22 de la Loi Fédérale du 25 juin 1891, qui est ainsi conçu:

„La succession est soumise à la loi du dernier domicile du défunt.

„On peut toutefois par une disposition de dernière volonté ou un pacte successoral soumettre sa succession à la législation du canton d'origine.“

Eh bien, nous pourrions invertir l'ordre, si Vous le voulez. La Suisse serait disposée à reconnaître la loi nationale en premier lieu, sous la condition que le testateur ait la faculté de soumettre sa succession à la loi du domicile, notamment en ce qui concerne la dévolution des biens, les rapports, la quotité disponible et la réserve.

Voilà, Messieurs, en grandes lignes ce que je pense sur la proportion dans laquelle la loi du domicile pourrait être appelée à jouer un rôle. Ce que je demande à la Conférence c'est de laisser un certain terrain de fonctionnement à la loi du domicile à côté de la loi nationale et de mettre

ces deux principes en harmonie autant que possible. Je me permets de rappeler ce que j'ai dit à ce sujet à la Conférence de 1894 (voir Actes II page 17).

Enfin, il y a plusieurs questions auxquelles la Confédération attache aussi un grand prix, par exemple celle de régler sur un même pied le droit de succession sur les meubles et les immeubles. Je m'abstiendrai cependant pour le moment d'en parler en détail.

Un dernier mot encore. Nous sommes ici pour faciliter les rapports internationaux. Nous réussirons à faire une œuvre durable et non fragile si nous tenons compte des différentes opinions. Il est hautement désirable et d'un intérêt capital que notre travail soit vraiment une pareille œuvre de transaction.

Le Président remercie M. Meili de l'exposé si intéressant qu'on vient d'entendre. Tout ce qui tend à la réalisation du but visé par l'honorable Délégué mérite d'être pris en sérieuse considération.

En réponse à la demande de M. de Martens le Président dit que le procès-verbal contiendra un compte-rendu in extenso du discours du Délégué suisse.

On passe à l'échange de vues provisoire et général sur la I^ière^ partie, section a:

Dispositions concernant le mariage, conditions pour la validité du mariage.

Le Président demande à M. Lainé de bien vouloir expliquer la portée de la remarque qu'il a faite sur le texte de l'article 1.

M. Lainé croit qu'on s'est mépris sur le sens de l'observation à laquelle le Président a fait allusion. Cette observation portait sur un cas où la loi du lieu de la célébration pourrait faire repousser la loi nationale si celle-ci contenait des prohibitions qui viendraient à l'encontre du droit public local.

Le Projet de Programme, dans une note qui se rattache à l'article 1, fait mention de cette observation en termes qui donnent à penser que M. Lainé a eu l'intention de faire par rapport à la capacité de contracter mariage une concession à la loi du domicile ou du lieu de la célébration. Ceci n'est aucunement le cas.

Son observation avait trait à un cas qui s'est présenté en France:

Un Français avait épousé une femme de couleur en Louisiana, où un tel mariage était interdit.

La validité de ce mariage fut contestée. Si l'on avait dû se référer à la loi nationale, le mariage contracté à l'encontre de cette loi n'aurait pu être considéré comme valable. Il n'en a point été ainsi.

L'annulation aurait causé un scandale dans un pays où le droit public admet les mariages entre gens de couleur différente. La validité du mariage a été reconnue.

L'observation de M. Lainé ne portait donc pas sur l'article 1, mais visait l'article 2 et n'avait nullement pour but de demander une place

plus considérable pour la loi du domicile, ce qui serait contraire à l'opinion personnelle de M. Lainé. Il est reconnaissant à M. le Président de lui avoir fourni l'occasion de dissiper les doutes qui avaient pu surgir.

Le Président remercie M. Lainé pour l'explication qu'il a bien voulu donner. Cependant la Commission néerlandaise a déjà constaté (voir sa remarque à la page 7 des „Documents relatifs à la Troisième Conférence") que: „si la Conférence se décide pour l'adoption du principe sur lequel repose l'observation de M. Lainé, il faudrait trouver une rédaction différente de celle proposée dans le Projet de Programme".

M. van den Bulcke constate que la Commission belge a parfaitement saisi la portée de l'observation de M. Lainé, puisque c'est à l'article 2 et non à l'article 1 qu'elle a rattaché la disposition qui y fait droit.

M. le baron Galvagna dit qu'à son avis il est très difficile aux agents diplomatiques ou consulaires de dresser en pleine connaissance de cause les certificats visés à l'alinéa 2 de l'article 3. Il vaudrait mieux ne point obliger ces fonctionnaires à les délivrer.

Le Président croit que la seconde partie de l'alinéa 1er: „ou par un certificat des autorités compétentes de leur pays, soit par tout autre mode de preuve etc. . . ." donne satisfaction aux scrupules de M. le baron Galvagna.

M. Renault dit que la disposition quant aux certificats des agents diplomatiques ou consulaires a en vue certains pays dont les agents sont autorisés à délivrer de pareils certificats. Entre autres la Suisse a conclu avec la France un arrangement qui consacre cette faculté.

M. Pierantoni fait des observations sur l'article 3 quant à la preuve des conditions nécessaires pour contracter mariage. Il croit dangereux d'accepter la preuve par le moyen de certificats des agents diplomatiques ou consulaires. On peut les admettre conventionnellement entre pays limitrophes, comme le font par exemple les conventions de l'Italie avec la Suisse et la France. Mais dans les pays lointains où il n'y a que des agents locaux, on peut se tromper, on peut commettre des abus. Il constate que l'article donne un plein pouvoir aux autorités locales. Le Code italien sanctionne le système des publications qui retarde la célébration du mariage et qui n'assure pas la preuve qu'un Italien ne se soit marié dans d'autres pays. Il rappelle le système anglais: les fiancés déclarent par affidavits posséder les conditions requises par leurs lois nationales. En cas de déclarations fausses, il y a les travaux forcés. L'article 103 du Code Civil sanctionne une juste preuve: le certificat de l'autorité compétente du pays auquel l'époux appartient. La pratique a fait accepter les actes notariés. — M. Pierantoni croit que les difficultés seraient écartées et que les erreurs seraient empêchées si l'on voulait augmenter la juridiction des agents diplomatiques et consulaires en leur permettant de célébrer les mariages même quand la fiancée n'est pas de la nationalité du pays de l'agent diplomatique ou consulaire. Il cite l'exemple de la Belgique et du Japon qui ont accompli ce progrès.

On passe à la discussion provisoire de la section b:

Effets du mariage sur l'état de la femme et des enfants.

M. Pierantoni voudrait remplacer: „la loi du pays auquel appartenait le mari etc. . . .“ par „auquel appartenaient les époux“ afin de tenir compte des changements de nationalité.

M. Renault observe que la loi nationale n'est pas nécessairement la loi du pays d'origine.

M. Pierantoni cite un exemple en relevant que l'Italie n'admet pas le principe de la nationalité d'élection.

M. Renault répond que le changement de nationalité est prévu à article 3.

M. Roguin remarque que l'on a dit trop peu quant à l'état des enfants nés avant le mariage. Les dispositions sont trop fragmentaires. Il préfère éliminer toutes règles sur la filiation et les remettre à une Conférence ultérieure. M. le Délégué de Suisse expose que la Constitution Fédérale contient un article (54) suivant lequel le mariage opère légitimation des enfants illégitimes et que cette disposition est applicable même aux enfants adultérins. Il serait probablement impossible au Gouvernement Fédéral d'adhérer à une convention qui compromettrait ce principe. Pour cette raison il semblerait préférable d'extraire des dispositions relatives au mariage ce qui concerne l'état des enfants et d'élaborer une réglementation spéciale des questions de filiation, légitime, illégitime et adoptive.

Le Président donne acte à M. Roguin de sa déclaration.

M. Renault se rend parfaitement compte de la difficulté signalée par M. Roguin, mais il ne comprend pas bien le désir de renvoyer cette matière à une Conférence ultérieure. L'obstacle étant basé sur la Constitution Fédérale il ne pourra être levé par un examen ultérieur.

M. Roguin reconnaît que c'est en effet un renvoi de difficultés; pourtant un examen ultérieur permettrait peut-être de trouver une formule acceptable.

M. de Paepe s'associe aux observations de M. Renault. Le renvoi que demande le Délégué de la Suisse lui paraît inutile. L'obstacle signalé par M. Roguin est insurmontable, puisque cet obstacle dérive de la Constitution Fédérale.

M. Roguin explique que la proposition par lui faite a pour but de permettre au Gouvernement Fédéral d'adhérer à la Convention sur le mariage, sans se heurter aux difficultés occasionnées par la question de légitimation.

M. de Martens propose de renvoyer cette question à la Commission pour le mariage; c'est là qu'on devra décider, parce qu'il est impossible de discuter ce sujet ici.

Le Président propose de passer à la section nouvelle:

Effets du mariage sur les biens des époux.

L'échange de vues préalable sur cette matière est renvoyé à la Commission compétente.

Par rapport à la section c:

Divorce et séparation de corps,

M. Matzen attire l'attention de la Conférence sur l'amendement proposé par le Gouvernement de Danemark d'accord avec le Gouvernement Norvégien au sujet de l'article 5, et tendant à remplacer les mots „le tribunal compétent" par „l'autorité compétente." Le Délégué de Danemark remercie la Commission néerlandaise d'avoir recommandé cet amendement qu'il espère voir adopté par la Conférence.

Son Collègue le Délégué de Suède a proposé un amendement au même article 5, concernant l'autorité compétente dans les cas où le divorce peut être obteuu par un décret administratif. M. Matzen se rallie à cette proposition, qui est d'une importance égale à celle de l'amendement qu'il a mentionné en premier lieu. Sans l'adoption de ces deux propositions il serait d'après son avis impossible au Danemark de signer une Convention sur cette matière.

M. Pierantoni fait noter les conséquences de l'article premier. La législation italienne n'admettant pas le divorce, les Italiens ne pourront divorcer qu'en renonçant à leur nationalité. Le Délégué d'Italie fait des réserves à ce sujet.

Quant à l'article 5, M. Pierantoni demande s'il sera toujours défendu aux tribunaux italiens d'accepter la demande en divorce d'étrangers domicilés en Italie?

M. Renault et le Président constatent que telle est bien la portée du projet qui exige l'accord entre la loi nationale des époux et la loi du pays où la demande est formée.

On passe à la IIième partie:

Dispositions concernant la tutelle,

qui ne donne lieu à aucune observation.

Le Président ouvre la diccussion sur la IIIième partie:

Dispositions concernant les successions, les testaments et les donations à cause de mort.

M. Meili fait observer qu'il est absolument nécessaire de régler la question du for. Il recommande cette matière à l'attention spéciale de la Commission.

Le Président dit qu'en effet la question du for n'a pas encore été réglée ici. D'ailleurs, cette importante question a déjà été soulevée par M. Roguin lors de la première Conférence.

M. Meili répond qu'il recommande l'examen de cette question par suite des instructions positives de son Gouvernement.

M. Lainé estime qu'il conviendrait de ne pas réunir les diverses matières qui font l'objet de cette partie du Projet de Programme. Parmi ces matières il y en a une, qui du reste est la principale, qui semble avoir été suffisamment approfondie par la science pour être l'objet d'une convention: c'est la dévolution successorale des biens avec ce qui s'y

rattache naturellement, notamment les rapports, la quotité disponible et la réserve. Mais les autres, à savoir les donations et les testaments, ne paraissent pas être parvenues au même degré de maturité et par conséquent devraient être réservées pour former l'objet d'un règlement ultérieur.

M. Pierantoni croit nécessaire d'ajouter à l'article 8 que l'universitas juris comprend les successions légales et les successions testamentaires, dans le but de laisser à part la dévolution des biens vacants à l'Etat et le droit de déshérence.

Le Président est convaincu que la Commission qui sera désignée pour la matière des successions prendra en sérieuse considération la remarque que vient d'émettre M. Pierantoni.

Personne ne désirant plus la parole, la discussion générale est close et, sur la proposition du Président, on procède à la constitution de quatre Commissions spéciales qui sont composées comme suit:

Ière Commission (mariage etc.), M.M. Kriege, van den Bulcke, Oliver y Esteller, Renault, Lainé, Töry, Heemskerk, Goussakowsky, de Hammarskjöld et Meili. La commission, qui aura à traiter toutes les matières se rapportant au mariage et qui est assez nombreuse, pourra se subdiviser en sous-commissions si elle le juge opportun;

IIième Commission (successions et testaments), MM. Dungs, van Cleemputte, Matzen, Rahusen, Missir et de Martens;

IIIième Commission (tutelle), MM. Schumacher, Thorn, Ort et Beichmann; cette Commission complétera son travail en considérant s'il y a lieu de joindre au règlement de la tutelle des mineurs des dispositions concernant l'interdiction (tutelle des majeurs) et, en cas affirmatif, elle élaborera un avant-projet.

IVième Commission (faillite), MM. de Paepe, Pierantoni, Feith et Roguin; cette Commission est chargée en outre de considérer quelles matières nouvelles pourront être soumises à l'examen de la Conférence et de préparer les avant-projets y relatifs.

En réponse à une question posée par M. Renault, le Président constate que les membres des Commissions voteront par pays. Par conséquent l'absence d'un membre fera, éventuellement, passer son droit de vote sur un autre Délégué de son Gouvernement.

Le Président réserve à MM. les Présidents d'honneur ainsi qu'à lui-même la liberté de prendre part aux travaux de chacune des Commissions.

M. de Martens tient à être complètement renseigné sur la tâche de la quartrième Commission. Si toutes les questions qui n'entrent pas dans le Projet de Programme lui sont remises, s'ensuit-il que chaque membre pourra lui faire des propositions sur un sujet quelconque?

Il est à craindre qu'une pareille méthode, si elle était suivie, ne mène à aucun résultat pratique et cela d'autant plus que, comme le premier Délégué de Russie l'a déjà fait ressortir à la séance d'ouverture, les Délégués du Gouvernement Impérial n'ont aucune instruction sur les matières non mentionnées au Projet de Programme.

Le Président ne partage pas l'appréhension de M. de Martens. Les membres de la Commission sont certainement convaincus avec lui qu'il ne s'agit pas ici d'une réunion de jurisconsultes, mais d'une Conférence de Délégués de différents Etats.

Il prie les Commissions de désigner elles-mêmes leurs Présidents et leurs Rapporteurs et propose qu'elles se réunissent dès l'après-midi.

Cette proposition est adoptée.

Le séance est levée à midi.

Le Président:
Asser.

Le Premier Secrétaire:
J. J. Rochussen.

Les Secrétaires:

Beelaerts de Blokland. *T. R. J. E. Stoop.*
C. van Vollenhoven. *H. van Karnebeek.*

Procès-verbal n° 3. (Séance du 6 juin 1900.)

La séance est ouverte à 2¼ heures.

Sont présents;

MM. Asser, Président, Dungs, Kriege, Schumacher, Töry, van Cleemputte, van den Bulcke, Matzen, Oliver y Esteller, de Monbel, Renault, Lainé, le baron Galvagna, Pierantoni, Feith, Heemskerk, Ort, le comte de Selir, Missir, de Martens, Goussakowsky, de Hammarskjöld, Beichmann, Meili et Roguin.

Le Président dit que, la Conférence ayant décidé de ne pas lire les procès-verbaux en séance, des épreuves des procès-verbaux des deux premières séances ont été envoyées à tous les Délégués. Il prie ces Messieurs de vouloir renvoyer au Premier Secrétaire aussi bien les épreuves contenant des rectifications que celles qui seraient approuvées sans observations, afin que le texte définitif des procès-verbaux puisse être arrêté et distribué dans le plus bref délai possible.

Avant de procéder à l'ordre du jour, le Président tient à exprimer de la manière la plus sincère son admiration et sa reconnaissance à ses collègues qui, déjà dans la semaine qui s'est écoulée depuis l'ouverture de la Conférence, ont accompli une besogne très considérable et achevé une grande partie du travail.

Le zèle et la promptitude tout à fait remarquables avec lesquels le Secrétariat a rempli sa tâche, a facilité les travaux de la Conférence; MM. les Délégués ont pu constater le dévouement des Secrétaires, qui mérite dès maintenant tous les éloges.

Le Président est convaincu que grâce à l'esprit de conciliation qui a constamment animé les Délégués dans leurs laborieuses délibérations, l'œuvre si heureusement inaugurée sera couronnée de succès.

Sur la proposition du Président la Conférence aborde l'examen des propositions de la Troisième Commission relatives à

la tutelle des mineurs.*)

Le Président est d'avis qu'il sera utile de suivre la méthode adoptée par les deux Conférences antérieures. Le projet serait donc après la première lecture renvoyé à un Comité de Rédaction, composé des rapporteurs des quatre Commissions et du Président.

Cette proposition est adoptée.

M. Thorn, le rapporteur de la Troisième Commission, ayant dû quitter La Haye pour des raisons urgentes, M. Schumacher, Président de la Troisième Commission, se déclare prêt à prendre la place destinée à M. Thorn dans ce Comité.

Le Président constate qu'on est complètement d'accord quant aux principes fondamentaux des dispositions projetées sur la tutelle des mineurs.

La tutelle sera régie par la loi nationole; si, d'après cette loi, il n'est pas pourvu à l'organisation de la tutelle d'un mineur à l'étranger, les agents diplomatiques et consulaires pourront prendre les mesures nécessaires à cet effet; enfin, s'il n'est pas possible d'instituer la tutelle par ce moyen, la loi du lieu de la résidence sera appliquée.

Ce sont en somme les principes adoptés par la Conférence de 1894.

M. Schumacher, regrettant que la Troisième Commission se trouve sans rapporteur, remplacera M. Thorn et donnera les explications nécessaires sur le rapport et le projet; sa tâche n'étant point aisée, en raison aussi des difficultés de la langue, il fait appel au concours bienveillant de ses collègues MM. Ort et Beichmann.

On aborde l'examen de l'article 1:

La tutelle d'un mineur est régie par sa loi nationale.

M, Töry rappelle la proposition faite par le Ministère Royal Hongrois de la Justice (voir „Documents relatifs à la Troisième Conférence", page 54), tendant à intercaler après l'article 1er une nouvelle disposition ainsi conçue: „La capacité pour être tuteur est réglée par la loi nationale du mineur. Le devoir pour être tuteur est réglé par la loi nationale du tuteur".

En ce qui concerne la capacité pour être tuteur, la Troisième Commission a donné satisfaction à cette proposition en constatant dans le Rapport que les causes d'exclusion et de destitution du tuteur doivent être du domaine de la loi nationale du mineur, tandis qu'il en est de même des pouvoirs du tuteur. Mais quant au devoir d'être tuteur, la Troisième Commission a été d'avis qu'il ne convient pas d'appeler la loi du mineur à régler l'obligation d'assumer le mandat de tuteur. Cette opinion est également conforme à la manière de voir du Ministère Royal Hongrois de la Justice. Il y a cependant un point de différence. La Commission n'a pas voulu trancher la question de savoir si l'obligation

*) Voir l'annexe à ce procès-verbal.

d'assumer le mandat de tuteur doit se déterminer d'après la loi nationale du tuteur ou d'après la loi du lieu où la tutelle s'exerce. Par contre, le Ministère Royal Hongrois de la Justice aurait désiré voir régler expressément cette question. Comme il résulte cependant de l'interprétation des articles du projet, conjointement avec les termes du rapport, que ce n'est pas la loi nationale du mineur qui règle l'obligation d'assumer le mandat de tuteur, M. Töry ne croit pas que le Gouvernement Hongrois insistera sur l'adoption de l'article qu'il avait proposé.

M. Pierantoni appelle l'attention de la Conférence sur les conflits existant par rapport à la nationalité des mineurs, en raison du fait que certaines lois, pour déterminer la nationalité, donnent la préférence à la lex loci et d'autres à la lex originis. Ainsi le cas peut se produire que des mineurs ont deux lois nationales jusqu'à ce que, en devenant majeurs, ils soient appelés à se décider pour l'une ou l'autre nationalité. Il demande, si en adoptant l'article 1, la Conférence estime avoir statué sur le cas de ce conflit, ou si la question est réservée.

M. Renault dit que cette question de double nationalité s'est souvent présentée dans la pratique. On a cependant admis comme principe que les questions de nationalité seraient écartées des délibérations de la Conférence, et que la convention n'aurait à régler aucune espèce de conflit de nationalité.

Si d'après la loi du pays où le mineur a sa résidence habituelle, celui-ci est ressortissant de cet Etat, les autorités du pays ne tiendront naturellement compte que de cette nationalité et non d'une autre nationalité que le mineur possèderait également en vertu de la loi d'un autre Etat. Mais les Conférences antérieures ont été d'accord de n'entrer aucunement dans cet ordre d'idées

M. Schumacher déclare partager la manière de voir de M. Renault. En 1894, la 4ième Commission a constaté expressément dans son Rapport (voir Actes II, page 111); „qu'il ne s'agissait que des mineurs dont la nationalité est établie et précisée".

M. Pierantoni répond que son but était de provoquer cette explication. Peut-être serait-il utile de recommander aux Gouvernements de considérer cette question.

Le Président constate que tous les Délégués connaissent les nombreux inconvénients qui résultent des conflits de nationalité, mais ces difficultés sont tellement graves qu'il est impossible d'en aborder actuellement la solution.

L'article 1er est adopté.

On passe à l'article 2:

Si la loi nationale n'organise pas la tutelle dans le pays du mineur au cas où celui-ci aurait sa résidence habituelle à l'étranger, l'agent diplomatique ou consulaire de l'Etat auquel le mineur ressortit pourra y pourvoir, conformément à cette loi, si elle l'autorise à cette fin et si la loi du lieu ne s'y oppose pas.

Le Président fait observer que l'article 2 du projet de la Commission présente en premier lieu un changement de rédaction pour l'indication du cas où les agents diplomatiques ou consulaires sont appelés à pourvoir à la tutelle. Sur ce point il préférerait la rédaction proposée par le Gouvernement de Russie (voir „Documents", page 52); toutefois c'est une question qui devra être examinée par le Comité de Rédaction. Une seconde modification, par contre, regarde le fond: c'est celle qui introduit à la fin de l'article les mots: „et si la loi du lieu ne s'y oppose pas".

M. Schumacher répond que la Commission, en proposant cette clause, a fait droit à un amendement de l'Allemagne. L'article 5 du projet néerlandais sur les conditions pour la validité du mariage contient une restriction analogue que la Commission a estimé utile de reproduire.

Le Président remarque que la restriction ne lui semble pas à sa place dans la matière dont il s'agit ici. Il a tenu à signaler la différence.

En réponse à une question posée par M. le Comte de Selir, le Président dit que le vote sur la rédaction proposée par la Commission n'a que la signification d'une première lecture. La revision de cette rédaction sera confiée au Comité de Rédaction.

M. Renault rappelle les motifs pour lesquels on a insisté sur la nécessité de mettre la rédaction de cet article en conformité avec celle de l'article 5 du projet sur le mariage. Quant à la question du fond, il doute cependant s'il y a lieu pour les Gouvernements d'être aussi susceptibles en matière de tutelle qu'en matière de mariage.

M. Schumacher ayant donné lecture de ce qu'a dit à ce sujet dans son rapport la Commission de 1894, M. Renault réplique qu'il importe de ne pas perdre de vue la divergence entre le projet de 1894 et celui qui est présenté actuellement.

Le Président fait ressortir la grande différence qui existe entre l'intervention des agents diplomatiques ou consulaires en matière de mariage, laquelle est plutôt exceptionnelle, et celle tendant à faire instituer des tutelles l'étranger. La dernière est de beaucoup moins rare et a pour but de pourvoir à un cas de nécessité urgente. N'est-il alors pas excessif d'exiger en ce qui concerne la tutelle, tout comme pour le mariage, le consentement exprès de la loi du pays où réside l'agent diplomatique ou consulaire?

Le Président est enclin à préférer le régime adopté par la Conférence de 1894.

M. Pierantoni, se ralliant aux vues que vient d'énoncer M. le Président, déclare être contraire à la clause qui donne à la loi du lieu la préférence sur celle des agents autorisés par leur loi à organiser la tutelle d'un mineur. Il fait ressortir les avantages de l'action de ces agents étrangers qui, mieux que les autorités locales, connaissent leurs ressortissants, la langue, les intérêts et les conditions de fortune de ceux-ci, les personnes indiquées pour former le conseil de famille. Du reste, d'après les principes généraux, c'est le consul qui peut exercer les actes appelés ceux de justice gracieuse; et les autorités locales trouvent leur avantage à ne pas devoir

se mêler aux affaires d'étrangers tant qu'il n'y a pas d'intérêts de leurs sujets à assurer.

M. Roguin propose, au nom de la Délégation Suisse, de supprimer la fin de l'article 2.

Sur l'observation du Président que, si l'on retranche ces derniers mots, les Etats qui s'opposent à l'intervention des agents diplomatiques ou consulaires en matière tutélaire, croiront peut-être ne pas pouvoir signer la Convention, M. Roguin déclare ne pas insister, s'il y a une opposition aussi absolue.

Le Président demande si l'un des Etats représentés opposerait actuellement un non possumus à l'intervention indiquée.

M. Kriege répond que le Gouvernement allemand attache beaucoup d'importance à ce que cette clause soit maintenue.

M. Renault désire mettre encore une fois en évidence que la susceptibilité des Etats en matière de tutelle ne doit pas être aussi vive que pour le mariage. Cela est démontré par l'exemple de la Suisse qui n'admet pas les mariages consulaires tout en permettant les tutelles organisées par des agents étrangers. Laisser une autorité étrangère célébrer un mariage revient en effet à lui permettre une sorte de juridiction; mais concéder à ces agents d'organiser une tutelle est un acte d'une tout autre nature qui n'implique pas l'exercice d'une autorité quelconque. Par conséquent, la Conférence ne se mettra pas en contradiction avec elle-même si elle admet ici ce qu'elle refuse pour le mariage.

M. Kriege est d'avis qu'il n'y a pas lieu d'avoir tant de scrupules, à la condition toutefois qu'il ne s'agisse que de consuls de carrière. En Allemagne il y a beaucoup de consuls honoraires, qui ne seront pas tous assez bien renseignés pour leur confier les questions tutélaires notamment en ce qui concerne le contrôle. Il est à remarquer que d'après beaucoup de législations ce sont là justement des questions d'une nature très importante.

Le Président dit que c'est certainement un point à considérer. La question pourrait être éliminée si l'autorisation à pourvoir aux tutelles n'était donnée par les Etats qu'aux consuls de carrière.

M. Kriege estime qu'il s'agit ici de fonctions de souveraineté exercées par un consul étranger, ce qui comporte un intérêt d'ordre public pour l'Etat.

M. Renault observe que la législation de son pays ne donne pas aux consuls français à l'étranger la faculté de nommer un tuteur ou d'en exercer les fonctions. Ils ne sont autorisés qu'à convoquer les parents et amis du mineur et à présider les conseils de famille, de même que le fait en France le juge de paix, par une espèce de juridiction gracieuse. Il ne peut rien y avoir là qui puisse blesser l'autorité territoriale.

M. Heemskerk demande s'il est bien dans l'intention de l'Allemagne que le Gouvernement de la résidence habituelle du mineur, par le seul fait de s'opposer à l'intervention consulaire, pourra obtenir que l'autorité locale désigne un tuteur ressortissant du pays de cette résidence.

M. Kriege ayant répondu que l'autorité locale pourra nommer un tuteur à son gré, M. Heemskerk désire voir préciser quelle sera alors la conséquence d'une pareille opposition de la loi du lieu. Comme l'article 2 suppose qu'il n'y a pas d'autorité compétente d'après la loi nationale, et que, dans l'espèce, les agents diplomatiques ou consulaires ne seraient non plus compétents, la tutelle devra, aux termes de l'article 3 du projet, être régie par la loi du lieu. Mais alors le traité changerait tout à fait de portée, l'application de la loi nationale se trouvant fortement restreinte.

M. Kriege ne partage pas cette opinon. Il est loisible à chaque législation intérieure d'instituer des autorités locales qui, dans le cas prévu, nommeront un tuteur selon leur gré.

M. Missir croit qu'on pourra trancher la question en revenant au texte primitif de 1894. Le motif de l'Allemagne est l'appréhension que l'activité et la prudence des consuls honoraires laisseraient à désirer. Mais, du moment que certains Etats trouvent utile de leur confier les intérêts de leurs sujets, leur aptitude plus ou moins grande ne regarde que l'Etat dont ils relèvent, et nullement l'Etat où ils fonctionnent. Ce dernier Etat n'a qu'un seul intérêt par rapport à la tutelle des mineurs étrangers, à savoir qu'un tel mineur ne reste pas sans tuteur; tout le reste regarde l'Etat auquel appartient ce mineur.

M. Pierantoni rappelle que l'Italie a d'immenses populations ouvrières à l'étranger, mais qun l'action des agents consulaires en matière de tutelle n'a jamais donné lieu à des difficultés. D'ailleurs, les consuls honoraires chargés de protéger certains intérêts de leurs nationaux sont toujours sous la direction, soit d'un consul général ou autre agent consulaire de carrière, soit d'un agent diplomatique. C'est pourquoi il se range à l'avis de M. Missir.

M. Kriege persiste à croire que l'intérêt de l'Etat où le mineur a sa résidence habituelle est en cause en ce qui concerne la manière dont, et l'autorité par laquelle, une tutelle est organisée.

La proposition de M. Roguin tendant à supprimer les mots: et si la loi du lieu ne s'y oppose pas" est mise aux voix et adoptée par 8 voix contre 7.

Ont voté pour la suppression: la Belgique, la France, l'Italie, les Pays-Bas, le Portugal, la Roumanie, la Russie et la Suisse.

Ont voté contre: l'Allemagne, l'Autriche, la Hongrie, le Danemark, l'Espagne, la Suède et la Norvège.

L'article 3 du projet de la Commission, qui correspond à l'article 3, lettres a et b, du Programme et n'en diffère que par la rédaction, est adopté sans discussion:

Toutefois la tutelle du mineur ayant sa résidence habituelle à l'étranger s'établit et s'exerce conformément à la loi du lieu. si elle n'est pas ou si elle ne peut pas être constituée conformément aux articles 1 ou 2.

On procède à l'examen de l'article 4:

L'existence de la tutelle établie conformément à l'article 3 n'empêche pas qu'une nouvelle tutelle sout constituée par application des articles 1 ou 2.

Il sera, le plus tôt possible, donné information de ce fait aux autorités étrangères qui avaient d'abord organisé la tutelle.

L'ancienne tutelle cesse à compter du moment où cette information aura été communiquée au tuteur dont le mineur avait été pourvu à l'étranger.

M. Dungs propose de remplacer au troisième alinéa de cet article les mots: „communiquée au tuteur dont le mineur avait été pourvu à l'étranger" par ceux de: „communiquée à l'autorité étrangère."

Le Délégué d'Allemagne désirerait savoir si la Commission pourrait se rallier à cet amendement. Il s'agit de fixer le moment jusqu'auquel l'ancienne tutelle subsistera. En premier lieu, le système de la Commission ne permet pas de tenir compte de la difficulté qu'il peut y avoir à informer le tuteur de l'impossibilité même, si par exemple celui-ci a disparu. Ensuite: à supposer un tuteur, qui n'a pas reçu l'information dont il s'agit, conclut un contrat avec un tiers de mauvaise foi qui n'ignore pas qu'une nouvelle tutelle a été constituée; d'après le projet ce contrat serait évidemment obligatoire pour le mineur. C'est pourquoi les Délégués allemands proposent de statuer que l'ancienne tutelle prend fin du moment où les autorités du pays de résidence ont été informées; par ce moyen on évite les difficultés qui viennent d'être signalées.

Le Président déclare que personnellement il pourrait bien se rallier à la proposition de M. Dungs, mais qu'il aimerait à la compléter en y ajoutant que le Gouvernement renseigné sera obligé d'en informer le tuteur.

M. Schumacher fait ressortir la nécessité de fixer le moment du changement de tutelle, en vue, par exemple, du cas où chacun des deux tuteurs ferait bonâ fide quelque chose dans l'intérêt du mineur.

M. le baron Galvagna propose d'intercaler dans l'alinéa 2 les mots: „par l'entremise de leurs agents diplomatiques ou consulaires".

Le Président répond qu'une pareille addition obvierait au désir qu'il vient d'exprimer.

M. Missir propose de supprimer l'alinéa 3. La tutelle étant un mandat, le tuteur reste responsable jusqu'au moment où un nouveau tuteur vient prendre sa place. Il ne rentre donc pas dans le domaine du droit international privé de déterminer ce moment. C'est soit une question de fait, soit une question de droit que doit décider la loi du lieu où fonctionne la tutelle ou la loi qui dans l'espèce régit la matière des contrats. Par conséquent, il n'y a pas lieu de se préoccuper de cette question.

Le Président expose que la Conférence se trouve en présence de quatre propositions différentes: 1° celle de la Commission (la tutelle antérieure cesse au moment où le tuteur reçoit l'information), 2° celle des Délégués d'Allemagne (la tutelle antérieure cesse au moment où l'autorité étrangère reçoit l'information), 3° celle du baron Galvagna (information par l'entremise des agents diplomatiques ou consulaires), et 4° celle de

M. Missir, la plus radicale (suppression du 3ième alinéa). Il soumet toutefois à l'appréciation de M. Missir l'idée d'insérer dans la Convention une disposition expresse d'après laquelle on se référerait à la loi interne. Comme un conflit peut toujours surgir entre les deux lois tutélaires, il vaudrait mieux remplacer l'alinéa 3 par une phrase établissant clairement que l'ancienne tutelle ne prend fin que par le commencement de la nouvelle.

M. Beichmann dit qu'il ne peut se rallier à l'amendement de M. Dungs, puisqu'il est impossible pour l'ancien tuteur de cesser ses fonctions dans le moment même où les autorités du pays de la résidence auront été informées de la constitution de la nouvelle tutelle. Il faut aussi que le tuteur lui-même soit informé. Il se peut en effet que l'article 4 soit incomplet et M. Beichmann n'aura aucune objection contre une disposition complémentaire dans le sens indiqué par M. le Président.

M. Dungs estime avec M. Missir que c'est à la loi interne de décider la question si et dans quelle mesure l'ancien tuteur restera autorisé à agir au nom du mineur vis-à-vis des tiers de bonne foi, mais, d'autre part, il est du domaine du droit international privé d'établir clairement à quel moment la nouvelle tutelle commence et la tutelle du lieu de résidence prend fin. Par conséquent, il importe d'adopter, soit la proposition allemande, soit celle d'en référer à la législation interne par une disposition expresse dans la Convention. Il préfère le premier système.

M. Missir demande si la Commission pourrait se rallier à son amendement.

M. Lainé estime qu'il conviendrait de sauvegarder les droits des tiers en ajoutant à l'article la clause suivante: „sauf maintien des actes accomplis par des tiers de bonne foi".

M. Pierantoni dit qu'en suivant le projet de la Commission, l'on pourrait faire naître des conflits entre deux tutelles existant à la fois. La proposition du baron Galvagna constituerait le meilleur moyen d'éviter toutes les difficultés.

A la demande du Président si la Commission pourrait accepter la proposition italienne, M. Schumacher répond qu'elle a en effet pensé à cette solution, mais n'a pas considéré admissible qu'un tuteur nommé par l'autorité locale soit directement averti par un agent diplomatique ou consulaire étranger de sister ses fonctions.

M. le baron Galvagna fait observer que, si l'on insère les mots „par l'entremise de leurs agents diplomatiques ou consulaires", le Gouvernement national pourra en informer, soit le tuteur, soit le Gouvernement étranger. C'est à l'Etat dont relèvent ces agents de faire le choix entre ces deux procédés.

M. Heemskerk appelle l'attention de la Conférence sur une divergence entre l'alinéa 2 et l'alinéa 3 à laquelle l'adoption de l'amendement italien donnerait lieu. Mais l'article proposé par la Commission laisse également une lacune. La communication prescrite par l'alinéa 2 n'entraînerait

pas de fait la fin de l'ancienne tutelle; ne faudrait-il pas adopter un délai, par exemple de 24 heures, dans lequel les autorités locales seraient tenues d'informer l'ancien tuteur?

Le Président fait observer que si la Conférence accepte la proposition de M. Missir telle que l'a amendée le Président, on aura obvié aux scrupules conçus par M. Lainé.

Conformément au désir exprimé par M. Kriege, l'amendement allemand est mis aux voix en premier lieu.

Ont voté pour l'amendement: l'Allemagne, la Hongrie, l'Italie, la Russie et la Suisse.

Ont voté contre: l'Autriche, la Belgique, le Danemark, l'Espagne, les Pays-Bas, la Roumanie, la Suède et la Norvège.

Se sont abstenus: la France et le Portugal.

L'amendement est donc rejeté par 8 voix contre 5 et deux abstentions.

Comme suite à une question de M. Roguin, le Président répète qu'on ne vote les articles que sauf rédaction ultérieure.

M. Pierantoni demande, à propos de l'amendement de M. Missir avec la modification de M. le Président, ce qui sera de droit dans le cas où d'après la loi interne la tutelle, constituée sous son empire, ne cesserait pas en raison d'une nouvelle tutelle établie en pays étranger.

Le Président répond qu'on doit présumer que les lois internes tiendront compte des dispositions de la Convention.

M. Renault dit qu'on ne voit pas clairement laquelle des deux lois internes on vise. La loi de la résidence habituelle ou bien la loi nationale?

Le Président répond que, puisqu'il s'agit de la fin de l'ancienne tutelle, l'amendement vise nécessairement la loi interne du pays de la résidence.

M. Heemskerk rappelle la lacune qu'il a signalée. Il croit nécessaire de la combler.

Le Président estime que le Gouvernement qui a reçu l'information la transmettra au tuteur sans qu'une disposition expresse de la Convention l'y oblige.

M. le baron Galvagna retire son amendement, le Rapporteur ayant déclaré ne pas pouvoir l'accepter.

L'amendement de M. Missir est mis aux voix et repoussé par 8 voix contre 6 et une abstention.

Ont voté pour l'amendement: l'Espagne, la France, les Pays-Bas, le Portugal, la Roumanie et la Russie.

Ont voté contre: l'Allemagne, l'Autriche, la Hongrie, le Danemark, l'Italie, la Suède, la Norvège et la Suisse.

S'est abstenue: la Belgique.

Ensuite l'article 4 proposé par la Commission est mis aux voix et voté par 10 voix contre 5.

Ont voté pour: l'Autriche, la Hongrie, la Belgique, le Danemark, la France, l'Italie, le Portugal, la Russie, la Suède et la Norvège.

Ont voté contre; l'Allemagne, l'Espagne, les Pays-Bas, la Roumanie et la Suisse.

Le Président est d'avis qu'il serait utile, en ce qui touche cet article, de ne pas trop limiter les pouvoirs du Comité de Rédaction, afin qu'il puisse même en modifier un peu le sens, si cela lui paraît nécessaire.

La Conférence approuve cette idée.

La discussion est ouverte sur l'article 5:

Si le mineur a sa résidence habituelle à l'étranger, l'exercice de la tutelle, établie conformément à sa loi nationale, pourra être soumis à la loi du pays de sa résidence par l'effet d'une entente entre le Gouvernement de ce pays et le Gouvernement du pays auquel le mineur appartient.

M. Feith demande au rapporteur si la Commission tient beaucoup au nouvel article. Pour sa part il préfère l'article 3, lettre c, du texte de 1894. On avait alors eu en vue le cas suivant: Un père hollandais demeurant en Allemagne donne à ses enfants une éducation allemande; il choisit par disposition testamentaire un tuteur allemand; on peut dire que le père a ainsi manifesté le désir que ses enfants se trouvent sous une tutelle allemande. Il comprend, que, dans ce cas on attache une grande importance à la résidence habituelle du mineur, parce que ce sera la résidence que ses parents lui ont donnée avant le commencement de la tutelle.

M. Feith demande pourquoi la tutelle après avoir été constituée serait changée par le seul motif que le mineur ait sa résidence dans un autre pays? Quant à la question de l'entente entre deux Gouvernements, la désignation de la loi, suivant laquelle la tutelle sera exercée, peut être importante pour le mineur, mais elle n'a pas d'intérêt pour les Gouvernements.

M. Schumacher déclare que la Commission n'a pas accepté la lettre c de l'article cité par M. Feith parce qu'il y avait trop d'objections de la part de l'Autriche, de l'Italie, de la Russie, de l'Allemagne. La Commission a longtemps cherché une méthode qui limiterait la portée de cette disposition, sans cependant l'avoir trouvée. La Commission ne pouvait pas se rallier à la proposition de la Suède d'y insérer les mots „sauf réserve contraire“ parce qu'il lui semblait impossible de déterminer d'une manière incontestable la personne ou l'autorité, qui dans les cas différents aurait le droit de faire cette réserve. La Commission a donc pensé à supprimer tout l'article, comme avait proposé l'Allemagne. Mais comme la suppression pourrait avoir pour résultat l'interprétation de l'article 1 dans le sens que la transmise de l'exercice de la tutelle à l'autorité de la résidence du mineur est exclue même dans le cas où l'autorité qui avait organisé la tutelle d'après la loi nationale du mineur la jugerait utile, la Commission a cru devoir recommander à la Conférence l'article 5 tel qu'il est rédigé dans l'avant-projet.

M. Feith estime qu'il vaudra mieux supprimer tout l'article qui ne vise qu'un cas tout spécial.

M. Ort désire ajouter quelques mots à ce qu'a dit M. Schumacher. Par l'artice 5, l'ancien article 3 c a été élargi d'un côté et restreint de l'autre. Il a été élargi, d'abord en ce que l'article 5 ne s'applique pas seulement au tuteur désigné par la personne autorisé à cette fin, mais aussi à tout autre tuteur; en second lieu, par le fait que la disposition vise aussi le tuteur qui n'a pas sa résidence dans le même pays que le mineur. D'autre part, la portée de l'ancienne disposition a été restreinte par le mot „pourra" qui la rend facultative, et, en outre, par la clause qui exige une entente entre les deux Gouvernements.

M. le comte de Selir propose de lire au lieu de „Gouvernement": „autorité compétente".

Cette proposition est acceptée.

M. Missir ne comprend pas très bien comment une tutelle constituée selon la loi nationale peut être exercée ensuite sous le régime de la loi du pays de la résidence. Il croit qua l'article 5 mènera sur un terrain bien inconnu. Les ententes dont parle l'article 5 ont le caractère d'actes politiques. En les admettant, on sera bien éloigné du domaine du droit international privé et les décrets administratifs tiendront lieu de lois. Le Délégué de Roumanie propose de supprimer l'article.

M. Roguin demande une explication. Il ne voit pas très clairement si l'entente prévue aurait lieu une fois pour toutes, ou bien s'il faudrait s'entendre sur chaque cas concret.

Le Président constate que la disposition devra être interprétée dans le dernier sens.

M. Lainé se rallie entièrement au point de vue exposé par M. Missir. Le fonctionnement d'une tutelle dépend de l'organisation de la tutelle même. Supposons qu'une tutelle soit organisée dans un pays où la loi nationale exige seulement que, pour certains actes déterminés, le tuteur soit muni du consentement d'un tribunal, tandis que, dans le pays où le mineur a sa résidence habituelle et où par conséquent la tutelle doit fonctionner, l'organisation est d'une nature beaucoup plus compliquée et prescrit, par exemple, que le tuteur doit demander pour les mêmes actes le consentement d'un conseil de famille. Comment pense-t-on qu'une tutelle fonctionnera dans ces circonstances? Il ne faut pas méconnaître le lien intime qui existe entre l'organisation et le fonctionnement de la tutelle et qui défend de les séparer.

M. Beichmann s'étonne de l'opposition de M. Lainé. La rédaction a été modifiée pour donner suite à une proposition de la France (voir page 54 des „Documents relatifs à la troisième Conférence"). Répondant à l'observation de M. Missir, il appelle l'attention sur l'article 6 selon lequel dans tous les cas la tutelle s'ouvre et prend fin aux époques et pour les causes déterminées par la loi nationale du mineur. M. Beichmann ne peut partager l'appréhension du Délégué de Roumanie.

Il ajoute qu'il ne peut y avoir lieu à une entente que dans les cas où les institutions tutélaires sont de nature à permettre que la tutelle

organisée dans le pays d'origine du mineur fonctionne conformément à la loi du pays où il réside. D'ailleurs il ne s'agit ici nullement d'une obligation; il reste réservé aux deux Etats s'ils veuillent oui ou non que la loi de la résidence soit appliquée au lieu de la loi nationale. M. Beichmann croit donc que les objections ne sont pas justifiées.

M. Pierantoni se déclare pour la suppression de l'article. On peut admettre la possibilité de stipuler entre deux Gouvernements l'abandon de la règle qui donne la préférence à la loi nationale, sous la condition de la réciprocité pour l'avenir, mais l'article 5 permettrait l'abandon de l'article 1 par une entente des Gouvernements à un moment où la tutelle a déjà été organisée. Il n'y a pas d'exemples de novation de traités quand ils sont déjà en exécution et quand l'exécution a créé des rapports de droit privé.

M. Lainé observe que la règle de l'article 3 c du Projet de Programme implique que la tutelle est à la fois constituée, organisée et dirigée par une loi unique. En adoptant le système de l'article 5, le mineur serait pourvu de deux tutelles soumises à deux lois incompatibles. Il désapprouve la séparation qui est faite.

M. Dungs entend l'article 5 dans ce sens que la tutelle sera uniquement régie par la loi du pays de la résidence du mineur dans le cas où les autorités compétentes d'après la loi nationale renoncent à l'exercer et la laissent aux autorités du domicile. De cette manière il n'y aura jamais qu'une seule législation qui régira la tutelle: soit celle du pays d'origine, soit celle du domicile. Supposant que cette interprétation est exacte, M. le Délégué d'Allemagne est d'avis que la proposition de la Commission constitue une amélioration de l'article 3 c de l'ancien programme. Il serait contraire aux principes mêmes de la tutelle de laisser aux personnes intéressées le droit de décider par laquelle des deux lois la tutelle sera régie. Cette décision doit nécessairement appartenir aux autorités. M. Dungs propose de retrancher de l'article 5 les mots: „établie conformément à sa loi nationale", car il se pourrait que les autorités nationales voulussent laisser l'exercice de la tutelle au pays de la résidence du mineur avant que la tutelle soit établie.

M. Töry observe que M. Lainé a combattu l'article 5 parce qu'il juge impossible de séparer l'organisme tutélaire du fonctionnement de cet organisme. M. Töry admet bien cette impossibilité, mais il croit qu'il ne s'agit pas ici d'une telle séparation. L'article 5 n'établit rien d'autre que la faculté pour l'autorité tutélaire nationale de transmettre l'exercice de la tutelle à l'autorité tutélaire du lieu de la résidence du mineur, si telle mesure semble utile dans l'intérêt de ce dernier. Cette transmission comportera aussi l'application de la loi du lieu de la résidence du mineur par l'autorité tutélaire de ce lieu dans l'exercice de la tutelle. L'article 5 n'a donc pas pour conséquence que l'organisme tutélaire soit séparé du fonctionnement de cet organisme.

Le Délégué de Hongrie ajoute encore que, dans la pratique, ces transmissions de l'exercice de la tutelle par l'autorité d'un Etat à celle

de l'autre sont assez fréquentes et méritent d'être maintenues à cause de leur grande utilité.

M. Lainé répond que le système de M. Töry est tout différent de ce qui était proposé à la lettre c de l'article 3 du Projet de Programme. Cette disposition comporte que, dès le début, le Gouvernement du pays auquel appartient le mineur se désiste en quelque sorte de son droit de constituer la tutelle qui, par conséquent, sera constituée et régie conformément à la loi du pays où le mineur a sa résidence.

Le Président fait remarquer que l'interprétation donnée à l'article 5 par M. Dungs n'est pas celle de la Commission. D'ailleurs, même si les mots: „établie conformément à sa loi nationale“ étaient supprimés, il ne serait pas dit que les autorités nationales se désisteraient toujours de l'exercice de la tutelle avant que celle-ci fût établie au lieu de la résidence.

M. van den Bulcke regrette de ne pouvoir admettre l'article 5 tel que le propose la Commission. La rédaction arrêtée par celle-ci donne en effet au Gouvernement, c'est à dire au pouvoir exécutif, des droits qu'il n'a pas d'après la loi belge. Lorsqu'une tutelle est organisée et fonctionne d'après une loi déterminée, il ne peut appartenir au Gouvernement de modifier cet état de choses dont le maintien ou le changement ne peuvent être décidés que par les tribunaux.

M. van Cleemputte fait ressortir que l'article, tel qu'il est rédigé, trouverait, en Belgique, un obstacle dans la loi constitutionnelle. Il est impossible de laisser aux négociations entre autorités de deux pays ce qui appartient à la loi et au pouvoir judiciaire.

M. Schumacher observe qu'aucun des Etats ne sera obligé de transmettre l'exercice de la tutelle dans le cas dont il s'agit. L'article n'a d'autre but que de donner la faculté de transmettre cet exercice. Cette faculté sera d'une grande utilité pour l'Allemagne, l'Autriche et la Hongrie qui la désirent.

M. de Martens trouve qu'il y a une confusion d'idées. On parle d'un accord entre deux Gouvernements, ce qui est plutôt un acte politique. Deux cas pourront se produire. L'article 5 peut être interprété de façon à donner aux Gouvernements la faculté de s'accorder pour tous les cas qui pourraient se présenter, Selon une autre interprétation, il faudrait une entente spéciale pour chaque cas particulier. La différence est évidente.

Le Président constate que deux amendements ont été présentés.

Le permier, tendant à substituer au mot: „Gouvernement“ les mots: „autorités compétentes“, a été accepté.

Le President demande à M. le Délégué d'Allemagne s'il désire maintenir son amendement lequel a pour but de supprimer les mots: „établie conformément à la loi nationale.“

M. Dungs dit qu'il ne demande pas de mettre au vote l'amendement. Il espère qu'il en sera tenu compte quand il s'agira d'arrêter la rédaction définitive de l'article.

M. de Monbel suggère la rédaction suivante qui laisse intact le principe de l'article: „Si le mineur a sa résidence habituelle à l'étranger,

avant la constitution de la tutelle, le Gouvernement du pays d'origine et le Gouvernement du lieu auront toute faculté de s'entendre, si l'intérêt du mineur l'exige, pour que la loi du lieu régisse la tutelle."

Le Président prie M. le Délégué de France de vouloir bien présenter cette rédaction au Comité de Rédaction et propose de mettre aux voix la suppression ou le maintien de l'article.

Cette proposition est adoptée.

Ont voté pour le maintien de l'article 5: l'Allemagne, l'Autriche, la Hongrie, le Danemark, la Suède, la Norvège et la Suisse.

Ont voté contre: la Belgique, l'Espagne, la France, l'Italie, les Pays-Bas, la Roumanie et la Russie.

Le Président constate que la disposition proposée par la Commission n'a pas été adoptée.

L'article 6 est voté sans discussion:

Dans tous les cas la tutelle s'ouvre et prend fin aux époques et pour les causes déterminées par la loi nationale du mineur.

On procède à l'examen de l'article 7:

L'administration tutélaire s'étend à la personne et à l'ensemble des biens du mineur, quel que soit le lieu de leur situation. Cette règle reçoit, quant aux immeubles, les exceptions que la législation du pays de leur situation aura prescrites.

M. Dungs estime que la seconde phrase de cet article donne lieu à douter si le principe de la Convention n'est pas écarté ici en ce qui concerne les biens du mineur, de sorte qu'il y aurait un manque de réciprocité entre les Etats contractants. Actuellement plusieurs des Etats n'admettent pas la loi nationale à régir les immeubles; l'Allemagne toutefois reconnaît déjà le principe de la loi nationale même pour les immeubles du mineur. Or, la seconde phrase de l'article 7 fait, pour l'administration tutélaire, une différence entre les meubles et les immeubles, en statuant que, quant aux immeubles, les exceptions prescrites par la loi de leur situation seront respectées. D'ailleurs, cette différence lui semble présenter de graves inconvénients parce qu'elle comporte l'application, tantôt de la loi nationale, tantôt de la lex rei sitae. Le Délégué d'Allemagne est d'avis qu'il faudrait suivre l'exemple donné par la Commission pour la matière des successions, qui a admis l'application de la loi nationale même aux immeubles sis en pays étranger. Il désirerait que la seconde phrase fût supprimée ou, tout au moins, remplacée par la seconde phrase de l'article 7 du Projet de Programme dont la portée est plus restreinte.

M. de Martens observe que la Commission des successions ne s'est décidée pour le principe visé par M. Dungs, qu'á la majorité des voix.

M. Missir approuve entièrement l'article 7 ancien, qui ne respecte la loi du lieu que quand elle contient un régime spécial, par exemple pour un motif d'ordre politique. Il voudrait revenir à cette rédaction.

Le Président constate qu'on se trouve en face de deux systèmes différents, celui de 1894 et celui de la Commission actuelle. Cependant

la rédaction de l'artile 7 du Projet de Programme ne fait pas ressortir assez nettement le principe adopté. Si la Conférence se déclare pour ce principe, le Comité de Rédaction pourrait donc tâcher de trouver des expressions plus conformes à celles qu'on acceptera en matière de successions.

M. Renault se rallie aux vues des Délégués d'Allemagne et de Roumanie. la proposition de la Commission lui semblant inadmissible. La Commission a même voulu aller au-delà, comme le démontre son rapport; mais le Délégué de France ne pourrait pas concéder que la loi de la situation s'imposât par rapport aux immeubles dans une matière comme le régime tutélaire. Aussi désirerait-il vivement qu'on supprimât dans le rapport la dernière phrase concernant l'article 7 qui traite de la question fort discutable de l'hypothèque légale du mineur. Si la loi nationale du mineur n'admet pas cette hypothèque, la loi de la situation ne saurait en aucune façon la créer.

M. Schumacher répond que la Commission a déjà décidé de rayer cet alinéa qui ne figurera pas dans le texte définitif du rapport.

M. Roguin appuie chaudement ce qui a été dit par MM. les Délégués d'Allemagne et de France. Il rappelle que, d'après quelques législations, il suffit qu'entre les biens d'un mineur étranger se trouve un immeuble, quelque petit qu'il soit, situé dans son territoire, pour qu'on le soumette à une tutelle spéciale. C'est une cause de beaucoup d'embarras et de frais considérables. Il recommande à la Conférence de sauvegarder strictement l'unité de la tutelle, abstraction faite de tout ce qui a trait aux conditions de forme pour la licitation d'immeubles etc., matières qui doivent être régies par la loi de la situation.

M. Pierantoni préfère l'ancien article 7; il faut éviter que les immeubles soient séparés des meubles, sauf le cas d'un régime spécial. Il est vrai que, dans le code italien, la propriété mobilière suit la personne, alors que les immeubles restent soumis à le lex rei sitae; mais cette disposition est sujette à critique, et il importe d'épargner aux mineurs les mauvaises conséquences d'un concours de plusieurs législations. L'exemple donné en matière de successions doit nécessairement être suivi ici.

M. Töry déclare se rallier à la manière de voir de la 3ième Commission. Il approuve l'exception qu'apporte l'avant-projet, quant aux immeubles, à la règle contenue dans la première phrase de l'article. Par rapport à la tutelle, l'application de la loi du lieu de la situation des immeubles n'est qu'une question d'administration qui doit se conformer à cette loi. Si M. le Président avait l'extrême obligeance d'inviter MM. les Délégués des Etats qui attachent du prix à ce que la proposition de la Commission soit adoptée, de vouloir bien renseigner la Conférence sur les dispositions principales de leur pays concernant les mesures qui sont prises chez eux par les autorités du pays pour l'administration des biens immeubles d'étrangers, on pourrait se convaincre que, comme le croit M. Töry, ces mesures ne sont pas de nature à être essentiellement moins efficaces pour les intérêts des mineurs étrangers que celles des autorités de leur patrie.

Quand un mineur étranger dont la tutelle est organisée aux termes de sa loi nationale, possède des immeubles en Hongrie, l'autorité hongroise lui nomme un curateur spécial qui exerce ses fonctions sous le contrôle de l'autorité tutélaire hongroise et doit se conformer aux dispositions de la loi hongroise.

Le Président remercie M. le Délégué de Hongrie de son intéressante communication. Il sera reconnaissant si d'autres Délégués suivent cet exemple, mais le moment ne lui semble pas opportun de leur adresser une demande expresse dans le sens indiqué par M. Töry.

M. Lainé est d'avis, comme M. Renault, que le rapport va au-delà du texte lui-même; le rapport proclame la prédominance générale de la loi de la situation, tandis que le texte ne lui accorde que le rang d'une exception.

La première phrase de l'article 7 est adoptée sans vote.

Le Président, en mettant aux voix la seconde phrase, constate que le vote défavorable implique en même temps l'adoption de la seconde phrase de l'article 7 du Projet de Programme.

Cette dernière disposition est adoptée par 11 voix contre 3.

Ont voté pour: l'Allemagne, la Belgique, le Danemark, la France, l'Italie, les Pays-Bas, le Portugal, la Roumanie, la Russie, la Suède et la Suisse.

Ont voté contre: l'Autriche, la Hongrie et l'Espagne.

S'est abstenue: la Norvège.

On passe à l'article 8:

En attendant l'organisation de la tutelle, ainsi que dans tous les cas de besoin pressant, les mesures nécessaires pour la protection de la personne et des intérêts d'un mineur étranger pourront être prises par les autorités locales.

Le Président juge la modification apportée à l'ancien article 6 d'une grande importance et utilité, parce que le nouvel article est plus large.

MM. Missir et Renault croient que la rédaction pourrait être améliorée.

L'article est adopté, sauf rédaction.

La discussion s'ouvre sur l'article 9:

Les autorités d'un Etat sur le territoire duquel se trouvera un mineur étranger dont il importera d'établir la tutelle, informeront de cette situation, dès qu'elle leur sera connue, les autorités de l'Etat auquel le mineur ressortit.

Les autorités ainsi informées feront connaître le plus tôt possible aux autorités qui auront donné l'avis, si la tutelle a ou si elle n'a pas été établie.

M. Feith demande quelles autorités on a en vue. Le rapport dit que la disposition correspond à l'article 8 du Projet de Programme, mais

ce dernier article parle des Gouvernements. Le mot „autorités“ n'en est-il qu'un synonyme, ou bien la Commission visait-elle des autorités tutélaires ou autres?

M. Schumacher répond que la Commission a voulu laisser aux Etats toute liberté de désigner quelles sont les autorités dont parle l'article 9.

M. Pierantoni approuve la modification introduite dans l'article 9. Le mot „autorités“ comprend tous les fonctionnaires qui, d'après les lois intérieures, sont obligés de faire connaître les cas de mort d'étrangers, parce que les décès, avec les absences, et les condamnations, sont les faits qui font naître la nécessité d'organiser une tutelle. Le mot „Gouvernement“ est trop solennel et trop limitatif: dans tous les cas, le Comité de Rédaction pourra mieux préciser l'intention de la Conférence.

M. Missir fait observer que, dans les cas où il s'agit de communications internationales, ce sont le plus souvent des communications transmises de Gouvernement à Gouvernement par la voie diplomatique qu'on a en vue. Plusieurs traités, par exemple celui de 1896 pour les commissions rogatoires, ont accordé les communications entre des autorités spéciales, mais alors ils ont précisé la méthode à suivre. Ici rien n'est précisé, mais cela pourrait se faire encore. Cependant il faut d'abord savoir si la Conférence veut accorder aux autorités locales le droit de correspondre directement avec leurs collègues à l'étranger. Le Délégué de Roumanie est d'avis qu'il vaudrait mieux revenir au texte adopté en 1894, en restituant le mot „Gouvernement“.

M. Schumacher répond que la Commission persiste à croire qu'un terme un peu vague est préférable. Le point essentiel est que l'Etat duquel le mineur ressortit soit informé.

M. van den Bulcke pense qu'on pourrait peut-être tout concilier en disant que, sauf convention contraire entre les Etats intéressés, les communications se feront par voie diplomatique. Les communications directes entre des autorités locales ne sont pas de règle.

M. de Martens préfère le nouveau texte qui permettre de désigner aux fonctions de l'article 8, soit des autorités consulaires soit d'autres autorités spéciales.

M. Pierantoni dit que, dans tous les traités de commerce ou conventions consulaires, il est stipulé que des informations peuvent être données aux autorités consulaires et par elles. C'est ainsi la règle.

Le Président met en évidence que la rédaction est réservée.

M. Lainé croit que la disposition devrait être complétée. Les autorités de l'Etat où se trouve le mineur doivent savoir, non seulement si la tutelle a été établie oui ou non dans l'Etat auquel appartient le mineur, mais encore, dans le cas négatif, quelles sont les intentions des autorités de ce dernier Etat par rapport à l'institution de la tutelle.

M. Renault appuie cette idée; il faut que les autorités du pays de la résidence du mineur sachent à quoi s'en tenir.

M. Schumacher déclare accepter la proposition de M. Lainé.

Par suite de cette déclaration, M. Ort propose de lire: „si la tutelle a été ou sera établie."

Cette modification est approuvée, et l'article ensuite adopté.

Le Prédideut annonce qu'il a reçu une proposition complémentaire des Délégués d'Allemagne sur l'étendue de l'application du présent traité. Comme cette proposition a une grande portée, il vaut mieux ne pas la discuter en ce moment, mais plutôt la faire imprimer et l'examiner dans une séance ultérieure.

La Conférence se rallie à cette manière de voir.

Le projet ayant été adopté ainsi en première lecture, le Président tient à remercier la Commission pour son zèle et pour les modifications qu'elle a proposées, qui lui semblent avoir contribué beaucoup à améliorer le projet.

La prochaine séance est fixée au lundi 11 juin à 2 heures.

La séance est levée à 5 heures.

Le Président:
Asser.

Le Premier Secrétaire:
J. J. Rochussen.

Les Secrétaires:

Beelaerts de Blokland. *T. R. J. Stoop.*
C. van Vollenhoven. *H. van Karnebeek.*

Annexe au Procès-verbal N° 3.

Rapport de la Troisième Commission*) sur les dispositions concernant la tutelle des mineurs.

La Troisième Commission, chargée de l'examen du chapitre II du Projet de programme: „Dispositions concernant la tutelle", a rédigé l'avant-projet de convention qui suit. Elle a l'honneur de justifier son œuvre ainsi:

Le changement apporté à l'intitulé du chapitre s'impose, alors que la tutelle des majeurs est réservée à des arrangements ultérieurs.

Article 1. Pénétrée des principes directeurs auxquels le rapport de la Quatrième Commission de la Conférence de 1894 a rendu hommage, la Commission entend l'art. 1 en ce sens que la loi nationale du mineur régit les formes et les compétences au même titre que le droit matériel de la tutelle. Il paraîtrait inadmissible que la gestion de la tutelle par les autorités d'un pays étranger fut conduite d'après la législation du pays auquel le mineur appartient. La compétence et le droit ne sont pas, en matière de tutelle, susceptibles de disjonction.

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*) Cette Commission était composée de: M. Schumacher, Délégué d'Autriche, Président; M. Thorn, Délégué de Luxembourg, Rapporteur; M. Ort, Délégué des Pays-Bas; M. Beichmann, Délégué de Norvège.

Les causes d'exclusion et de destitution du tuteur doivent être du domaine de la loi nationale du mineur. Il en est de même des pouvoirs du tuteur.

Le projet arrêté par la Commission de 1894 avait développé expressément ces conséquences de la règle principielle sanctionnée par l'article 1. La deuxième Conférence a jugé inutile cette énumération. La Commission se rallie à cette manière de voir. Elle tient toutefois à signaler une question soulevée dans une des propositions de la Hongrie. Il s'agit de savoir s'il convient d'appeler la loi nationale du mineur à régler l'obligation d'assumer le mandat de tuteur. Dans le sentiment de la Commission la question comporte une solution négative. Quant à décider si l'obligation dont il s'agit doit déterminer d'après la loi nationale du tuteur ou d'après la loi du lieu où la tutelle est exercée, la Commission estime que cette difficulté sort du cadre de sa tâche.

Une dernière observation a trait à l'éventualité d'un changement de nationalité du mineur. La Commission de 1894 avait consacré à la réglementation de ce cas un article spécial, prononçant que le mineur demeurerait pourvu de la tutelle existante, tant qu'elle n'aurait pas été remplacée en conformité des art. 1 et 2. La deuxième Conférence a taxé de superflue et a rayé cette prescription. La Commission accepte le point de vue qui a prévalu en 1894. De quoi il résulte que l'art. 1 comprend dans ses prévisions, en cas de changement de nationalité du mineur, le droit, pour les autorités de la nouvelle patrie de l'intéressé, de se saisir de la tutelle, comme aussi leur obligation de s'en charger, si les autorités de l'ancien pays du mineur le demandent.

Article 2. Le remaniement que la Commission a fait subir au texte du Projet de Programme tend, conformément au vœu de la Belgique et de la Suède, à y mettre plus de clarté, en même temps qu'à fixer avec plus de netteté les conditions de la tutelle consulaire. (Voir les propositions de la Russie: „Documents," pag. 177.)

Il a été tenu compte de la proprosition de l'Allemagne, en considération de la règle, applicable par analogie, que trace l'art. 5 du chapitre Ia, sur le mariage.

La Commission a substitué dans cet article, ainsi que dans les dispositions suivantes, aux mots: „résidant" et „résidence", les expressions: „résidant habituellement" et „résidence habituelle". La résidence que ne caractériserait pas la stabilité exprimée par le qualificatif qui a été ajouté, semble impropre à servir de point de départ aux situations juridiques auxquelles celle se trouve mêlée comme élément efficient.

Les termes: „domicile" et „domicilié" ont été écartés sur le fondement des raisons accueillies déjà par la deuxième Conférence (Actes II. pag. 94).

Article 3. Le texte proposé par la Commission concentre en une seule énonciation abrégée les alinéas a et b de l'art. 3 du Projet de Programme. La modification est d'ordre purement rédactionnel.

Les réflexions que l'al. c de l'article a suggérées à la Commission, sont exposées ci-dessous au sujet de l'art. 5.

Article 4. La rédaction du Projet de Programme restreint la rentrée des autorités nationales dans leurs droits relatifs à la tutelle au cas où les empêchements qui avaient d'abord arrêté leur action auraient disparu. Cependant l'al. b de l'art. 3, que l'art. 4 comprend dans le renvoi qui en forme la partie initiale, prévoit précisément l'hypothèse où le défaut d'établissement de la tutelle constituerait un fait de négligence.

Il paraît utile d'organiser le passage de la tutelle des mains des anciennes autorités pupillaires aux mains des autorités nouvelles. Le moment précis du changement de régime doit être nettement marqué, sous peine de tomber dans la confusion.

L'argument a pari déterminerait naturellement l'application de la règle proposée à cette fin par la Commission au cas où, pour cause de changement de nationalité du mineur, le régime de la tutelle arriverait à changer.

Article 5. Dans le projet de la Commission l'art. 5 remplace, ainsi qu'on l'a déjà indiqué, l'art. 3, al, c, du Projet de Programme.

Cet al. c a rencontré de vives résistances. L'Italie estime qu'il est conçu dans un sens trop large. La Russie et l'Autriche proposent d'en circonscrire le champ d'application. L'Allemagne demande qu'il soit supprimé. La Suède préconise un moyen terme, consistant dans l'intercalation des mots „sans réserve contraire".

La Commission a jugé que l'art. 3, al. c, du Projet de Programme était entaché du défaut de refuser à la tutelle légitime les avantages qu'il peut présenter. On ne comprendrait pas, dans les pays de droit français, que le père tuteur p. e. pût, en cas de désignation testamentaire d'un successeur, instaurer un régime de tutelle diffèrent de celui auquel sa propre charge avait été soumise, encore qu'il eût rempli, lui-aussi, la condition de résidence à l'étranger exigée pour l'application de la loi étrangère.

La Commission inclinait à acquiescer au tempérament proposé par la Suède. Elle a été toutefois gênée par la difficulté d'arrêter irréprochablement le sens et les effets de la clause de réserve.

On est finalement tombé d'accord, au sein de la Commission, d'adopter une formule rejetant l'assujétissement obligatoire de la tutelle à la loi du lieu, dans les cas énoncés, et abandonnant la dérogation à l'art. 1 à l'entente du Gouvernement ou pays auquel ressortit le mineur et de celui de sa résidence.

Article 6. Le texte proposé par la Commission reproduit l'art. 5 du Projet de Programme.

On a critiqué cette disposition en ce qu'elle édicterait un principe trop absolu. La Commission n'a pas cru devoir s'associer à cette censure. Elle a été dirigée dans son appréciation par les considérations qui, dans le rapport de la Commission de 1894 (pag. 113), militent en faveur de la règle débattue et les conséquences qu'elle emportera.

Article 7. La signification des mots „régime spécial" qui figurent à l'art. 7 du Projet de Programme, a soulevé des interprétations divergentes. La disposition se rapporte-t-elle à des immeubles d'une catégorie spéciale (biens fidéi-commissaires etc.), qui seraient soustraits à l'empire

de la tutelle nationale, ou a-t-on songé à respecter en général la loi du lieu de la situation qui pour les immeubles appartenant à des mineurs étrangers, prescrirait la suprématie du statut de la situation?

D'accord avec la Commission de 1894, la Commission a considéré que le texte devait indubitablement être lu dans le sens de la dernière version, et, pour dissiper à cet égard toute équivoque, elle a, à l'aide d'une formule généralisante, amendé l'ancienne rédaction.

Article 8. — La Commission reprend, sous cet article, en l'élargissant, l'art. 0 du Projet de Programme. Les raisons sociales et humanitaires auxquelles les Etats sacrifient en exerçant une mission de protection à l'égard du mineur étranger dans le cas prévu par l'ancien texte, réclament pareillement l'intervention des autorités locales en toute autre circonstance d'urgente nécessité. C'est ainsi que la législation norvégienne prescrit l'assistance obligatoire de tout mineur appelé en justice répressive. La Commission a choisi les termes „pourront" etc., au lieu du mot „seront", pour exprimer l'idée d'une faculté plutôt que celle d'une obligation.

La modification du mot „biens" en „intérêts" a pour objet d'effacer la nuance limitative de l'expression susvisée.

Article 9. — Cette disposition correspond à l'art. 8 du Projet de Programme qu'elle ne modifie qu'au point de vue de la rédaction.

Le dernier alinéa a été ajouté par la Commission afin de déférer au vœu de la Suède de la Norvège et du Danemark qui, grâce à cette concession, sont disposés à renoncer aux demandes plus étendues que les Délégués de ces Puissances avaient formulées, concernant les informations internationales en matière de tutelle, sous l'art. 1 du Projet de Programme.

Il s'entend au surplus que les termes: „dont il importera d'établir la tutelle" expriment la prévision que des circonstances concrètes particulières rendraient nécessaire la mise en œuvre de l'institution tutélaire.

La Commission a eu à s'occuper de la proposition formulée par M. Meili dans les termes ci-après:

„Les contestations auxquelles l'établissement et la gestion de la tutelle pourront donner lieu seront portées devant l'autorité compétente du pays dans lequel la tutelle aura été instituée.

Il en sera de même des actions en responsabilité dirigées contre les tuteurs ou les autorités tutélaires."

La Commission a pensé que la question de compétence contentieuse soulevée par cette proposition ne rentrait pas dans sa tâche. Ces contestations pourront différer tellement, tant par rapport à leurs objets qu'à l'égard des circonstances qui les font naître, qu'il serait presque impossible de les soumettre à une règle commune de compétence exclusive, d'autant plus que la compétence contentieuse en général n'a pas encore été réglée.

En conséquence la Commission soumet à la Conférence les résolutions suivantes:

Avant-projet d'une Convention relative à la tutelle des mineurs.

Article 1. (Voir article 1 du Projet de Programme.)

La tutelle d'un mineur est régie par sa loi nationale.

Article 2. (V. article 2 Projet de Progr.)

Si la loi nationale n'organise pas la tutelle dans le pays du mineur au cas où celui-ci aurait sa résidence habituelle à l'étranger, l'agent diplomatique ou consulaire de l'Etat auquel le mineur ressortit pourra y pourvoir, conformément à cette loi, si elle l'autorise à cette fin et si la loi du lieu ne s'y oppose pas.

Article 3. (V. article 3 Proj. de Progr.)

Toutefois la tutelle du mineur ayant sa résidence habituelle à l'étranger s'établit et s'exerce conformément à la loi du lieu, si elle n'est pas ou si elle ne peut pas être constituée conformément aux articles 1 ou 2.

Article 4. (V. article 4 Proj. de Progr.)

L'existence de la tutelle établie conformément à l'article 3 n'empêche pas qu'une nouvelle tutelle soit constituée par application des articles 1 ou 2.

Il sera, le plus tôt possible, donné information de ce fait aux autorités étrangères qui avaient d'abord organisé la tutelle.

L'ancienne tutelle cesse à compter du moment où cette information aura été communiquée au tuteur dont le mineur avait été pourvu à l'étranger.

Article 5. (Article nouveau.)

Si le mineur a sa résidence habituelle à l'étranger, l'exercice de la tutelle, établie conformément à sa loi nationale, pourra être soumis à la loi du pays de sa résidence par l'effet d'une entente entre le Gouvernement de ce pays et le Gouvernement du pays auquel le mineur appartient.

Article 6. (V. article 5 Proj. de Progr.)

Dans tous les cas la tutelle s'ouvre et prend fin aux époques et pour les causes déterminées par la loi nationale du mineur.

Article 7. (V. article 7 Proj. de Progr.)

L'administration tutélaire s'étend à la personne et à l'ensemble des biens du mineur, quel que soit le lieu de leur situation. Cette règle reçoit, quant aux immeubles, les exceptions que la législation du pays de leur situation aura prescrites.

Article 8. (V. article 6 Proj. de Progr.)

En attendant l'organisation de la tutelle, ainsi que dans tous les cas de besoin pressant, les mesures nécessaires pour la protection de la personne et des intérêts d'un mineur étranger pourront être prises par les autorités locales.

Article 9. (V. article 8 Proj. de Progr.)

Les autorités d'un Etat sur le territoire duquel se trouvera un mineur étranger dont il importera d'établir la tutelle, informeront de cette situation, dès qu'elle leur sera connue, les autorités de l'Etat auquel le mineur ressortit.

Les autorités ainsi informées feront connaître le plus tôt possible aux autorités qui auront donné l'avis, si la tutelle a ou si elle n'a pas été établie.

Le Rapporteur: *Thorn.* Le Président: *Schumacher.*

Procès-verbal n° 4. (Séance du 11 juin 1900.)

La séance est ouverte à 2 heures.

Sont présents:

M. M. Asser, Président, Dungs, Kriege, Schumacher, Töry, de Paepe, van Cleemputte, van den Bulcke, Matzen, Oliver y Esteller, Renault, Lainé, Pierantoni, Rahusen, Feith, Heemskerk, Ort, le comte de Selir, Missir, de Martens, Goussakowsky, de Hammarskjöld, Beichmann, Meili et Roguin.

Le Président prie les Délégués de bien vouloir renvoyer après correction les procès-verbaux de la dernière séance.

M. Pierantoni dit que le baron Galvagna se trouve dans l'impossibilité d'assister à la séance.

L'ordre du jour comporte l'examen des propositions de la Deuxième Commission sur

les successions, les testaments et les donations à cause de mort.*)

Le Président rappelle que la matière des successions a fait l'objet d'un examen approfondi tant en 1893 qu'en 1894. La Conférence aura maintenant à décider définitivement quelles dispositions pourront entrer dans le cadre d'un traité à conclure entre les Puissances représentées.

Il ouvre la discussion sur le rapport et l'avant-projet.

M. Dungs, Délégué d'Allemagne, fait la déclaration suivante:

„Les Délégués allemands prennent pour point de départ que la convention, abstraction faite de l'article 10, n'affectera aucunement les dispositions des lois internes en ce qui concerne la compétence de la magistrature et la procédure en matière de successions. Ils estiment en outre que chaque Etat aura la liberté de soumettre à l'application de ses lois des immeubles situés sur son territoire en tant que ces immeubles sont exceptés du patrimoine et soumis à un régime foncier spécial. Cette réserve embrasse les fiefs, les fidéï-commis de famille et tous les biens qui, en ce qui concerne l'ordre de succéder, sont soumis à un régime autre que celui

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*) Voir l'annexe à ce Procès-verbal.

qui régit le reste de la succession, alors qu'il s'agirait de la succession d'un ressortissant de l'Etat.

Le Président donne acte à M. le Délégué d'Allemagne de sa déclaration.

M. Meili demande si le titre de l'avant-projet comprend aussi l'institution contractuelle? Il lui semble que non. Il prie le Rapporteur de bien vouloir s'expliquer à ce sujet.

Il aimerait à savoir pourquoi la Commission n'a pas jugé bon de tenir compte de la situation aussi difficile qu'exceptionnelle de la Suisse.

M. Meili se réfère sur ce point à ce qu'il a exposé dans la deuxième séance plénière, ainsi qu'à la note spéciale relative à la matière, présentée à la Commission par M. Roguin.

Le Délégué de Suisse regrette que le projet ne fasse aucune concession à la loi du domicile et observe que le rapport garde un silence complet quant aux trois hypothèses indiquées par la Délégation Suisse. Tous deux, M. Roguin et lui, avaient cru en effet qu'une concession aurait pu être faite de l'une ou de l'autre des trois manières suivantes:

1° application de la loi du domicile aux successions des étrangers nés dans le pays;

2° application de cette loi aux personnes qui depuis un certain nombre d'années (par exemple depuis 10 ans) étaient domiciliées dans le pays où elles sont décédées;

3° application de cette loi à ceux qui soumettent, par une déclaration authentique ou testamentaire, leur succession à la loi de l'Etat du domicile.

M. Meili remarque que la Commission a rejeté implicitement, sans mot dire, ces combinaisons des lois de domicile avec les lois nationales. Il trouve que le système de l'article 1, qui rend un hommage complet à la loi nationale et exclut radicalement et sans aucune réserve la loi du domicile, est très fâcheux.

Cependant le Délégué de Suisse persiste à croire que les rapports de droit international privé devront être régis par un principe, qui repose sur la conciliation de la lex patriae et de la lex domicilii. Ce principe est la media sententia qu'il a préconisée déjà si souvent dans les différentes Conférences. C'est à cause de cet argument que M. Meili a recommandé la solution indiquée en troisième lieu. Il regrette que ce principe, reposant sur des considérations d'équité pratique, n'ait pas pu trouver des partisans dans la Conférence. En le repoussant on s'est mis en contradiction évidente avec les propositions concernant le mariage et le divorce que la première Commission soumettra à la Conférence.

Dans ces conditions il est impossible à M. Meili de croire ou même d'espérer que le Gouvernement Fédéral Suisse puisse adhérer à la Convention sur les successions, quoique la Suisse sera toujours prête à faire de grandes concessions quand il s'agit de favoriser une œuvre ayant pour but de faciliter la vie internationale.

M. van Cleemputte, Rapporteur, en répondant à M. Meili, dit que la question si les institutions contractuelles sont comprises dans le

titre de la Convention, n'a pas été soulevée au sein de la Commission. Selon son avis personnel, le Rapporteur estime cependant que l'avant-projet embrasse en effet les institutions contractuelles. Le sens du mot „successions" est tout à fait général et puisque les successions par institution contractuelle ont des effets aussi larges que les successions par voie de testament, il lui semble être clair que l'institution contractuelle est comprise dans l'avant-projet. Le Rapporteur constate qu'en ceci il a exprimé une opinion purement personnelle.

Quant à la seconde question soulevée par M. Meili, le Rapporteur observe que le rapport ne reproduit pas en détail tout ce qui a été dit dans la Commission. Il s'agissait nécessairement de faire un aperçu général et succinct. S'il n'y est pas parlé expressément des concessions à faire à la loi du domicile, on ne doit cependant pas en déduire que la Commission se soit préoccupée exclusivement de la loi nationale. Au contraire, le Rapporteur tient à déclarer que la Commission a sérieusement examiné les raisons qui militent en faveur de concessions à faire à la loi du domicile. Il en est résulté que la Commission, tout en estimant qu'il s'agissait présentement surtout de trouver une solution acceptable, s'est beaucoup rapprochée du point de vue de M. Meili.

Par exemple, en matière de compétence, on a exprimé le vœu de faire prévaloir la loi du domicile. Ensuite l'article 10 de l'avant-projet, laisse à chaque Etat la faculté de statuer librement quant aux mesures nécessaires pour assurer la conservation des biens héréditaires, tandis que l'article 11 réserve aux différentes législations plusieurs matières très importantes.

Ces concessions sont déjà beaucoup. Il est possible que M. Meili ne les trouvera pas très considérables, mais ces concessions seront peut-être déjà de nature à susciter des difficultés.

M. de Martens désire expliquer le point de vue du Gouvernement Russe sur les articles de l'avant-projet.

Les Délégués de Russie sont obligés de faire des réserves expresses.

Les procès-verbaux des Conférences de 1893 et de 1894 démontrent déjà que la Délégation russe, bien que sympathique à beaucoup des principes qui ont inspiré les différents articles de l'avant-projet, se trouve dans l'impossibilité d'accepter à présent cet avant-projet dont le point cardinal se trouve en contradiction avec la législation russe. Dans ses observations sur le Projet de Programme le Gouvernement Imperial s'est attaché déjà à exposer son point de vue.

M. de Martens désire donc constater ces réserves expresses et s'expliquer sur les circonstances qui forcent la Russie à repousser le principe de l'unité de la succession, appliqué aux immeubles en vertu de l'article 1, sauf la réserve spéciale de l'article 7.

Le principal motif est celui-ci que la vraie base fondamentale de tous les rapports internationaux, la réciprocité, fait défaut en cette matière. La Russie est à elle seule plus qu'un pays, c'est presque un monde qui s'étend de la Baltique à l'Océan Pacifique, de la Mer Blanche à la Mer

Noire. Sur la surface de ce monde vivent plusieurs millions d'étrangers qui y jouissent de l'hospitalité généreuse et proverbiale russe, y possèdent des maisons, des terrains étendus, de vastes propriétés. Si la Russie adoptait l'unité de la succession, la loi nationale du défunt serait appelée à régir tous ces immeubles. Cela reviendrait à admettre en fait la conquête légale et pacifique du territoire de l'Empire en vertu d'un droit étranger. Les conséquences auraient une portée des plus étendues; déjà maintenant on parle d'une „Belgique russe". Soumettre à la loi étrangère des territoires aussi considérables serait renverser l'ordre public et social de plusieurs contrées, et constituerait, dans une certaine mesure, une renonciation à la souveraineté. Et, d'autre part, il n'y a peut-être que quelques centaines de Russes qui possèdent des biens fonds à l'étranger, en Europe. Quand, vis-à-vis de ces quelques centaines, les étrangers en Russie se comptent par centaines de milliers, y constituent de vraies populations, il est clair que la réciprocité fait défaut.

Ce manque de réciprocité se manifeste encore dans les autres avant-projets, qui eux aussi, et notamment celui sur le mariage, sont inspirés d'un ordre d'idées tout autre que celui qui découle du principe de la réciprocité. Il est vrai qu'on a fait toutes les concessions possibles, même aux préjugés parlementaires, mais les convictions religieuses et sociales de la Russie, ses idées en ce qui touche les rapports de l'Eglise avec l'Etat, des idées qui sont bien loin d'être des préjugés, n'ont pas été respectées. La Russie n'est disposée à tenir compte des lois étrangères que sous condition expresse et absolue qu'on fasse droit à ce qui est loi chez elle.

Nonobstant ces scrupules la Russie a vivement applaudi à l'initiative prise par l'Italie en 1883 et plus tard par le Gouvernement des Pays-Bas: elle a accueilli avec une grande sympathie les projets formulés par la Hollande. Cette sympathie était toute naturelle. La Russie a souvent pris elle-même l'initative pour la réglementation de questions de droit international, elle a toujours pris une part directe et immédiate dans toute l'action internationale qui tendait vers la codification du droit. Mais il est naturel aussi qu'en présence de cet état de choses et vis-à-vis du manque de réciprocité qui vient d'être signalé, la Russie désire se réserver sa complète liberté d'action.

M. de Martens aimerait à démontrer par une image comment il comprend, d'après son opinion personnelle, l'œuvre de la Conférence. Il y a en effet des principes éternels de justice et de droit enracinés dans la conscience humaine et développés par la civilisation, qui sont du domaine de toutes les nations. Ces principes se présentent à l'esprit comme une grande mer libre, accessible à toutes les nations. Des navires petits et grands qui représentent les petites et les grandes Puissances en sillonnent la surface. Tous ces navires profitent à leur gré de cette eau large et libre, c'est-à-dire toutes les nations puisent dans cet océan des principes éternels de justice les règles de leurs législations intérieures. Grâce au perfectionnement des machines législatives se trouvant sur ces navires-Etats, on a réussi à rendre accessibles à tous ceux qui habitent ces navires les lois qui les

règnent. Mais afin que le voyage des navires sur cette mer soit sûr, exempt de tout péril, il faut des phares qui puissent leur éclairer la route. Ces phares sont les principes généraux du droit qui doivent répandre leur lumière, montrer la route à suivre, d'un commun accord des nations, et prevenir ainsi des collisions et naufrages, en cas de conflit des dispositions des législations intérieures des navires-Etats. Voilà la tâche qui s'impose à ceux qui s'occupent de codifier le droit international; c'est à eux d'ériger les phares en proclamant les principes généraux et dominants de droit international. Mais par contre ils doivent aussi s'abstenir d'entrer dans les détails des différentes législations nationales, détails qui seront les écueils sur lesquels pourrait aussi échouer le navire qui porte l'œuvre de la Conférence.

M. de Martens est convaincu que si la Conférence veut éviter cet écueil, elle doit limiter sa tâche à ériger des principes généraux; si elle veut faire un travail pratique, elle doit laisser à l'avenir toutes les questions de détail qui menacent d'arrêter son travail et sa marche en avant.

„Erigez, Messieurs, des phares et ne créez pas des écueils pour les navires des nations!“ dit le Délégué de Russie.

En concluant, M. de Martens constate qu'il a maintenant exposé son point de vue par rapport à l'œuvre entreprise. Ce sera à la Conférence de se prononcer et de prendre des décisions.

Le Président remercie M. de Martens pour l'exposé si intéressant qu'il vient de donner.

Il est d'avis qu'il est dans l'intérêt d'une discussion régulière de procéder article par article.

Il donne lecture de l'article 1:

Les successions sont soumises à la loi nationale du défunt, quels que soient la nature des biens et le lieu où ils se trouvent.

La validité intrinsèque et les effets des dispositions testamentaires ou des donations à cause de mort sont régis par la loi nationale du disposant.

En ce qui concerne cet article, trois grandes questions de principe s'y rattachent:

1° Faut il adopter le principe de l'unité de la succession? C'est à cette question que se rapporte le discours de M. de Martens;

2° Est-ce la loi nationale du défunt ou la loi de son domicile qui doit régir la succession?

3° L'article 1 doit-il exprimer le régime successoral d'une manière générale ou bien doit-il être conçu dans des termes limitatifs, conformément à la proposition faite par la Commission française à l'article 1?

Le Président ouvre la discussion sur le principe de l'unité de la succession. Il s'agit de savoir si, selon l'image de M. de Martens, c'est un écueil ou plutôt un phare? Tout le monde est d'accord que la Convention devra se décider dans un sens ou dans l'autre. L'unité de la succession doit-elle être comprise dans un sens général ou devra-t-on la limiter aux immeubles en excluant les meubles?

Le Président prie MM. les Délégués de se prononcer sur cette question.

M. Pierantoni tient à signaler à titre de renseignement que le droit civil italien ne distingue plus entre la donation à cause de mort et la donation entre vifs.

En ce qui concerne la question soulevée par M. de Martens, il reconnaît que le Délégué de Russie était justifié à faire ses réserves au nom de son Gouvernement; mais il conteste le bien fondé du principe énoncé par M. de Martens, que la réciprocité soit la base du droit international. M. Pierantoni attire l'attention de la Conférence sur la législation actuelle de l'Italie qui depuis 1865 a abandonné le principe de la réciprocité parce que le droit privé de l'étranger doit être reconnu, même si l'Etat dont il est ressortissant n'est pas encore arrivé à abolir dans sa législation la réciprocité, soit diplomatique, soit législative.

Le Délégué d'Italie expose que l'unité des successions est une règle aussi juste qu'utile, qui après avoir été déjà adoptée par un grand nombre d'Etats, devrait être universellement reconnue dans le droit positif et consacrée par la Convention dont la Conférence va élaborer le projet. Il ne croit pas non plus que le droit reconnu aux étrangers d'avoir des biens fonds situés à l'étranger puisse aboutir à une conquête pacifique qui serait contraire à la souveraineté de l'Etat où se trouvent ces immeubles; la propriété est généralement régie par la loi du pays du lieu de la situation et le droit privé est sous la tutelle du droit public.

M. Lainé fait la déclaration suivante: Le principe de l'unité de la succession est, à mon avis, l'un de ceux que la science, dans la plupart des pays de l'Europe continentale, a le mieux mis en lumière, le plus solidement établis. Il me semble donc être arrivé à un degré de maturité suffisant pour devenir la base d'une convention internationale à conclure entre ces pays.

Nous ne nous dissimulons pas que, là, comme en France, où la loi actuelle est contraire à ce principe, de grands efforts seront nécessaires pour le faire adopter. Mais j'estime, quant à moi, que ce n'est pas une raison de l'écarter de la présente convention. Il y a lieu d'espérer que l'on comprendra que notre loi sur les successions, en ce qui concerne la dévolution légale des biens et ce qui en dépend, est une loi personnelle et par conséquent doit être placée, en droit international privé, pour les immeubles comme pour les meubles, dans le statut personnel. Il importe seulement de le faire dans de sages limites.

M. Töry déclare que le Gouvernement Hongrois après une étude renouvelée de la question qui occupe la Conférence, ne pourrait adhérer sans réserve au principe de l'article 1. L'ordre des successions ab intestato actuellement en vigueur dans la plus grande partie de la Hongrie est essentiellement différent de celui des autres Etats de l'Europe. Il n'est donc pas indifférent pour la Hongrie que la division des biens immeubles faisant part du territoire s'opère d'après des règles de succession qui ne sont pas approuvées par la législation hongroise. M. Töry ajoute qu'on

prépare en Hongrie un Code Civil, dont le projet va être publié prochainement. Comme son Gouvernement tient à ce que la législation de la Hongrie ait la pleine liberté de maintenir ou de rayer dans le futur Code Civil le principe de la loi territoriale quant aux biens successoraux immeubles, il a l'instruction de déclarer que l'alinéa premier de l'article ne peut être accepté par son Gouvernement que sous la réserve d'appliquer la loi territoriale aux biens immeubles, si tel serait le principe reconnu par la législation de pays où ils se trouvent.

Le Président donne acte à M. Töry de sa déclaration.

Il lui fait toutefois observer que la condition de la Hongrie ne diffère pas essentiellement de celle dans laquelle plusieurs autres Etats se trouvent encore aujourd'hui. En France et en Hollande notamment, le droit positif fait régir les immeubles par la loi du lieu où ils sont situés.

En second lieu il rappelle que d'après la note du Ministère Royal Hongrois sur le Projet de Programme, le Gouvernement Hongrois n'avait pas d'observation à faire sur le texte proposé.

M. Töry dit que son Gouvernement a renouvelé l'étude du Projet de Programme et que les réserves qu'il vient de faire sont formelles.

Le Président suppose donc que les réserves de M. Töry doivent être prises en ce sens que le Gouvernement Hongrois désire se réserver la pleine liberté d'action dans le cas où le nouveau Code Hongrois adopterait un principe contraire à l'unité de la succession.

M. Töry répond que telle est en effet la portée des réserves qu'il a faites.

M. van Cleemputte, Rapporteur, fait des réserves au sujet de la déclaration du Délégué de Russie. Il est d'avis qu'il sera utile d'établir une distinction entre les objections soulevées.

M. de Martens a dit que les rapports internationaux reposent sur la condition de la réciprocité. Cela est admissible en tant qu'il s'agit de rapports de droit public. L'exécution de jugements à l'étranger par exemple constitue en effet un empiètement sur la souveraineté étrangère. En matière de droit privé, par contre, la réciprocité ne saurait être considérée comme requise parce qu'alors, en adoptant l'image de M. de Martens, l'on se trouve sur la grande mer du droit de la famille et de ce qui en dépend. Alors les navires n'ont qu'à sauvegarder ce qui intéresse leur ordre interne, l'ordre public et social des Etats!

En 1893, comme en 1894, la Belgique a accepté le principe de l'unité. M. van Cleemputte déclare qu'elle l'adopte encore aujourd'hui sous réserve formelle toutefois de l'article 8.

M. de Hammarskjöld déclare que, tout en préférant le principe de l'unité des successions, il pourrait accepter la restriction désirée par le premier Délégué de Russie, restriction qui semble être en harmonie avec l'état actuel de la législation suédoise.

Le Président fait observer que dans son mémoire sur le Projet de Programme le Délégué de Suède a déclaré pouvoir accepter le principe de l'unité sans réserve.

M. Beichmann se rallie à ce qu'a dit le Délégué de Suède; personnellement il préfère décidément l'article 1 sans la restriction proposée par M. de Martens. Il croit cependant que la Norvège — ayant conclu déjà une convention avec la Russie contenant une telle restriction — peut accepter cette restriction.

Le Président ouvre la discussion sur la question de savoir quelle loi, la loi nationale du défunt ou la loi du lieu où s'est ouverte la succession, régira cette unité successorale ou bien s'il faut admettre et combiner le régime des deux lois.

M. de Martens déclare qu'il ne votera que sous la réserve que les immeubles sont exclus de l'unité de la succession.

M. Töry fait une déclaration dans le même sens.

M. Lainé rappelle que M. Meili a fait plusieurs propositions dont une, qu'il désirerait amender. Le Délégué de Suisse a indiqué comme solution possible la faculté donnée au disposant de soumettre par déclaration authentique ou testamentaire sa succession à la loi de l'Etat du domicile.

Si cette proposition revient à dire que le testateur peut se référer à la loi du domicile dans la mesure où il lui est loisible de s'écarter de la loi nationale, M. Lainé serait disposé à s'y rallier. Cette déclaration en effet constituerait en elle-même une sorte de testament et les dispositions de la loi nationale sur les testaments y seraient applicables.

Il n'y aurait donc aucun inconvénient à satisfaire au désir de la délégation suisse, interprété et restreint dans le sens qu'il vient d'indiquer. En tout cas ce point est digne d'être sérieusement examiné par la Conférence.

M. Lainé propose à cet effet une clause conçue dans les termes suivants: „Toutefois le disposant peut par un testament ou par une déclaration authentique soumettre sa succession à la loi du pays de son domicile dans les limites de la quotité disponible, fixée par la loi nationale."

Le Président croit que la proposition de M. Meili serait superflue si elle devait être interprétée comme l'a fait M. Lainé. Ce ne serait alors qu'une question de forme.

M. Lainé est d'avis que l'article proposé est utile, du moment qu'il est de nature à donner satisfaction à la Délégation Suisse.

M. Meili remercie M. Lainé pour le pas qu'il a bien voulu faire du côté de la Suisse; mais ce qu'il a proposé ne répond pas au désir de la Suisse. D'après la loi fédérale un Suisse est autorisé à soumettre sa succession entière, sans restriction, à la loi du canton d'origine. Cette faculté de recourir à la loi nationale est par analogie accordée aux étrangers domicilés en Suisse (art. 32 de la loi de 1891). Mais telle n'est pas l'idée dont il s'agit maintenant. Etant donné le principe de la Convention que la loi nationale est applicable, la Délégation Suisse soutient la thèse qu'il couviendrait de laisser la porte ouverte pour un acte solennel du testateur étranger par lequel il soumet la succession à la loi du domicile. Et pourquoi ne ferait-on pas cette petite concession à la loi du domicile? Si, par contre, on rétrécit cette faculté de la manière indiquée

par M. Lainé, M. Meilli n'en voit plus l'intérêt. Il espère toutefois que la Conférence voudra bien examiner l'idée que lui a soumise la Délégation Suisse.

Le Président rappelle que, comme l'a dit le Rapporteur, la Commission a pris en sérieuse considération les propositions des Délégués de Suisse. Il en est notamment résulté les concessions faites à l'article 8 de l'avant-projet à la loi du domicile.

M. Meili croit que l'article 8 rentre dans un tout autre ordre d'idées.

M. Renault ne voit pas non plus qu'il y ait un rapport entre l'article 8 et la proposition de M. Meili.

Il déclare que jamais la France n'acceptera une disposition avec la portée de l'article de la loi suisse. Il est absolument inadmissible pour la France de reconnaître à un de ses ressortissants le droit de soumettre purement et simplement sa succession à une loi étrangère quelconque de manière, par exemple, à supprimer la réserve.

M. Meili fait ressortir qu'il ne s'agit pas ici d'une faculté de soumettre sa succession à une loi étrangère quelconque; il n'est question de cette faculté que par rapport à la loi du domicile.

M. Pierantoni rappelle que la question dont il s'agit a été discutée dans la réunion de l'Institut de Droit International à Oxford.

Il admet que l'on peut reconnaître la préférence à donner à la loi du domicile d'un Suisse qui va d'un canton à l'autre parce qu'il s'agit toujours de la loi suisse; mais il ne peut pas admettre qu'un étranger établi en Suisse pourrait faire dépendre sa succession d'une loi étrangère; même dans le cas d'un changement de nationalité il y a à vérifier si ce changement n'a pas été fait pour frauder les droits assurés par la loi nationale à sa femme, à ses parents, à ses fils.

M. Lainé croit qu'il y a des raisons spéciales pour destinguer le cas d'un Français domicilié en Suisse et celui d'un Suisse ressortissant d'un canton quelconque domicilié dans un autre canton. Ce qui se décide en Suisse d'après des lois internes ne saurait servir de règle aux rapports de la Suisse avec des Etats étrangers proprement dits. La raison est celle-ci: le Français établi en Suisse aurait la faculté de faire des dispositions contraires à sa loi nationale; tandis qu'un Suisse qui change de domicile en Suisse change en quelque mesure, selon l'avis de M. Laine, de nationalité. La proposition de M. Meili mènerait trop loin.

Le Président estime que les propositions suisses sont de la plus haute importance et regrette que le Gouvernement Suisse ne les ait pas formulées dans une note spéciale. Il croit en outre que la question n'est pas encore mûre et probablement aucun des Délégués n'est pourvu d'instructions à cet effet.

Le Président propose donc aux Délégués suisses de réserver l'étude des idées qu'ils viennent de soumettre à la Conférence jusqu'au moment où il y aura lieu de renouveler ou de reviser la Convention.

M. Meili reconnaît que la question n'est pas encore mûre en ce moment et que la Commission ne s'en est pas trop préoccupée. Il déclare en conséquence que la Suisse pourrait être obligée de refuser son adhésion à un traité qui exclut d'une manière radicale la loi du domicile.

Le Président répond qu'il déplorerait beaucoup si la Convention n'obtint pas l'adhésion de la Suisse. Il croit cependant que la loi du domicile n'a pas été aussi radicalement écartée que le pense M. Meili. D'ailleurs les deux points de vue ne sont pas tellement éloignés l'un de l'autre. Le projet n'ôte nullement la faculté de formuler son testament de manière à faire régir la succession par la loi du domicile.

La discussion sur le second point étant close on aborde le troisième point: faut-il formuler le principe de l'article premier d'une manière générale comme le fait le Projet de Programme ou bien doit-il être restreint conformément à l'amendement proposé par la Commission française?

M. Lainé dit que la formule adoptée par la IIième Commission lui paraît être beaucoup trop large. Il propose de la restreinde ainsi:

„Les successions sont soumises à la loi nationale du défunt, quels que soient la nature des biens et le lieu où ils se trouvent, „en ce qui concerne la dévolution légale et tout ce qui en dépend, notamment les rapports, la quotité disponible et la réserve.“ “

Voici, en effet, si la formule de la Commission est maintenue, quelle sera l'économie du projet: il posera un principe très général, en le limitant par un certain nombre d'exceptions: il en résultera que toute question non prévue par l'une de ces exceptions sera nécessairement soumise à la règle.

Or, dans la matière des successions, qui est très complexe, il y a beaucoup de points au sujet desquels il est douteux que la loi nationale du défunt puisse correctement s'appliquer. Il en est ainsi, par exemple, des rapports des créanciers du défunt avec les héritiers, au cas où la succession contient plus de dettes que de biens, ou, dans le cas inverse, une succession solvable étant échue à un héritier insolvable, des rapports des créanciers du défunt avec les créanciers de l'héritier. Ne conviendrait-il pas, dans une certaine mesure, de faire place, ici, à la loi du lieu de l'ouverture de la succession? De même, en ce qui concerne la saisine des successibles, n'y a-t-il pas lieu d'hésiter entre la loi nationale du défunt, celle du lieu où s'ouvre la succession et celle du lieu de la situation des biens? De même encore, l'indignité des successibles peut être soumise ou bien à la loi nationale du défunt, ou bien à leur propre loi, ou bien à la loi du pays où le successible prétend exercer son droit. Ce ne sont là que des exemples.

Eh bien, tandis que la solution de ces difficultés devrait être laissée aux juges, la Convention les résout ou plutôt les tranche, non sans témérité. Il est vrai que, pour les rapports des créanciers de la succession, elle déclare, dans l'article 11, s'abstenir. Mais, dans bien d'autres cas, la règle générale s'imposera aux juges, malgré le sentiment qu'ils auront qu'elle devrait être écartée.

Il vaudrait donc mieux restreindre la règle à la dévolution légale des biens et à ce qui en dépend, en citant, à titre d'indications de ce dernier point de vue, les rapports, la quotité disponible et la réserve. On réglerait ainsi, d'ailleurs, ce qui constitue l'essence de la matière.

M. van Cleemputte, Rapporteur, dit que l'article 1 n'a point une portée aussi large que le suppose M. Lainé. Il résulte du rapport de 1893, ainsi que du rapport actuel, de la doctrine et du texte même qui est soumis à la Conférence que le principe de l'unité de la succession, loin d'être exclusif se concilie avec la lex loci actûs, la lex loci contractûs et la loi sur la capacité des successibles.

L'article 8 constitue une seconde limite en reconnaissant la loi de la situation des biens, ou bien une loi locale qui garantit l'ordre public ou social. Il est si vrai que ces limites sont considérables que lorsque M. Lainé a voulu donner des exemples il a tout de suite touché à des questions d'ordre public, social, ou moral. Car accorder le bénéfice de séparation c'est une question d'ordre public ainsi que celle de l'indignité des successibles.

La troisième limite se trouve consignée à l'article 11. Les autres controverses auxquelles M. Lainé a fait allusion s'y trouvent résolues. L'article 1 ne consacre donc pas un principe illimité.

D'autre part M. van Cleemputte est d'avis que la formule proposée par M. Lainé est plus dangereuse encore. „Dévolution légale“ exprime une idée bien large; „tout ce qui en dépend“ est vague et donne lieu à des interprétations différentes. Vient ensuite le mot „notamment“ qui signifie que ce qu'il précède ne sont que des exemples.

On peut se demander où chercher la restriction? D'ailleurs la science et la jurisprudence sont d'accord sur ce qu'embrasse le mot „succession“. Il n'y a plus de doute possible. Le Délégué de Belgique ne craint pas les hésitations des juges; il est convaincu que les juges et les avocats de la France et de tous les pays consulteront les procès-verbaux de la Conférence, s'ils se trouvent en présence d'une question à laquelle ce traité se rapporte.

Le Président fait observer à M. Lainé que la saisine aussi ne saurait susciter des difficultés, puisqu'elle est prévue à l'article 7.

Personne ne demandant plus la parole on passe au vote sur les trois questions de principe qui se rattachent à l'article 1.

Le principe de l'unité de la succession, y compris les immeubles, est adopté par onze voix contre deux et deux abstentions.

Ont voté pour: l'Allemagne, l'Autriche, la Belgique, le Danemark, l'Espagne, la France, l'Italie, les Pays-Bas, le Portugal, la Roumanie et la Suisse.

Ont voté contre: la Hongrie et la Russie.

Se sont abstenues: la Suède et la Norvège.

Le principe que ce sera la loi nationale du défunt à laquelle la succession sera soumise est adopté par douze voix contre une et deux abstentions.

Ont voté pour: l'Allemagne, l'Autriche, la Hongrie, la Belgique, le Danemark, l'Espagne, la France, l'Italie, les Pays-Bas, le Portugal la Roumanie et la Suède.

A voté contre: la Suisse.

Se sont abstenues: la Russie et la Norvège.

M. Meili demande que la proposition suisse ainsi qu'elle a été amendée par M. Lainé soit mise aux voix.

M. Lainé déclare que son amendement est inspiré par un désir de conciliation.

Le Président donne lecture de cette proposition, qui est conçue en ces termes: „Toutefois le disposant peut par un testament ou par une déclaration authentique soumettre sa succession à la loi du pays de son domicile, dans les limites de la quotité disponible fixée par sa loi nationale"

Le Président croit qu'il n'y a pas d'objection à l'adoption de cette proposition. Il est cependant d'avis qu'elle est inutile, puisqu'elle donne une faculté que personne ne conteste, du moins quand elle est exercée dans la forme d'un testament, et à laquelle la Convention ne s'oppose pas.

M. van Cleemputte, Rapporteur, estime que la proposition va trop loin en exigeant la forme authentique.

La proposition est mise aux voix et adoptée par onze voix et quatre abstentions.

Ont voté pour: l'Allemagne, l'Autriche, la Hongrie, le Danemark, la France, l'Italie, les Pays-Bas, le Portugal, la Roumanie, la Norvège et la Suisse.

Se sont abstenues: la Belgique, l'Espagne, la Russie et la Suède.

Le Président demande à la Conférence de bien vouloir se prononcer sur le troisième point: faut-il formuler le principe énoncé à l'article 1 d'une manière générale, ou bien vaudrait-il mieux de préciser la portée comme le fait l'amendement présenté par la Commission française?

Se sont prononcés en faveur d'une formule large treize voix contre une et une abstention.

On voté pour: l'Allemagne, l'Autriche, la Hongrie, la Belgique, le Danemark, l'Espagne, l'Italie, les Pays-Bas le Portugal, la Roumanie, la Suède, la Norvège et la Suisse.

A voté contre: la France.

S'est abstenue: la Russie.

L'alinéa premier de l'article 1 est ainsi adopté.

M. Renault demande pourquoi l'on n'a pas fait mention à l'alinéa 2 de l'institution contractuelle, s'il est vrai qu'elle entre, comme l'a dit le Rapporteur, dans le projet.

Il estime qu'il faut franchement exclure l'institution contractuelle ou bien la nommer dans le texte, car il lui semble qu'elle ne rentre pas sous l'énumération de l'alinéa 2.

M. Renault dit que, si on le consultait sur le sens de l'article, il répondrait que l'institution contractuelle n'y est pas comprise.

M. Meili est de l'avis de M. Renault. Il propose d'ajouter à cet effet une mention expresse, mais préférerait dire: „les contracts héréditaires", parce que l'institution contractuelle n'est qu'une des deux espèces de contrats héréditaires.

M. Roguin estime que le titre de l'avant-projet exclut déjà les contrats héréditaires dans leurs deux formes; c'est pour lui une raison de plus d'appuyer la proposition d'ajouter un nouvel alinéa à l'article.

M. Renault trouve que l'expression „contracts héréditaires" n'est pas claire; elle lui semble être d'une portée trop large.

M. Lainé est aussi d'avis que cette expression est trop compréhensive. Les contrats de renonciation aux successions futures y sont-ils compris? La France ne pourrait accepter cette formule.

M. Pierantoni prie ses honorés Collègues de ne pas faire entrer sous la forme d'amendements des adjonctions concernant des matières qui sortent des projets préparés. Les Délégués Français ont rappelé l'état de la doctrine et de la jurisprudence françaises qui considèrent la renonciation à la succession future comme contraire à l'ordre public. En Italie on a dernièrement décidé dans un cas spécial que la renonciation n'est pas contraire à l'ordre public; mais M. Pierantoni croit que la question est complexe parce qu'elle se rattache tant aux contrats qu'aux successions. La Conférence ne disposant pas en ce moment de renseignements précis quant aux différentes espèces de contrats successoraux, il importe de ne pas prendre une décision sur cette matière avant d'être bien informé. En tout cas le Délégué d'Italie votera contre la mention de ces contrats.

Le Président propose de mettre aux voix la proposition d'ajouter à l'article 1 un alinéa statuant expressément que les institutions contractuelles sont comprises dans le traité.

La proposition est repoussée par huit voix contre cinq et deux abstentions.

Ont voté pour: la Belgique, le Danemark, la France, la Suède et la Norvège.

Ont voté contre: l'Allemagne, l'Autriche, la Hongrie, l'Italie, les Pays-Bas, le Portugal, la Roumanie et la Suisse.

Se sont abstenues: l'Espagne et la Russie.

Ensuite on aborde l'examen de l'article 2 qui est conçu comme suit:

Les testaments et les donations à cause de mort sont valables, en ce qui concerne la forme, s'ils satisfont aux prescriptions, soit de la loi du lieu où ils sont faits, soit de la loi du pays auquel appartenait le disposant au moment de la confection de ces actes.

Néanmoins, lorsque pour les donations ou pour les testaments faits par une personne hors de son pays, la loi nationale de cette personne exige, comme condition substantielle, que l'acte ait une forme déterminée par cette loi nationale, le testament ou la donation ne peut être fait dans une autre forme.

Sont valables en la forme les testaments des étrangers, s'ils ont été reçus, conformément à leur loi nationale, par les agents diplomatiques ou consulaires de leur nation. La même règle s'applique aux donations à cause de mort.

A propos de l'alinéa 1er, M. Töry fait observer que les testaments se font non seulement par écrit, mais aussi oralement. Pour que l'alinéa 1er de l'article 2 puisse être appliqué aux testaments oraux, il lui semble nécessaire de remplacer les derniers mots de cet alinéa: „au moment de la confection de ces actes" par la clause suivante: „au moment où il disposait".

L'alinéa 1er est adopté, sous la réserve que le Comité de Rédaction examinera si l'observation de M. Töry doit donner lieu à une modification.

A propos de l'alinéa 2, M. Meili demande si les Délégués des Pays-Bas tiennent beaucoup à voir maintenu cet alinéa. S'il en était autrement, les Délégués Suisses aimeraient à le voir disparaître, parce qu'il leur semble être en désaccord avec l'idée fondamentale du projet qui est de donner toutes les facilités possibles au disposant.

Le Président répond que les Pays-Bas ont eu autrefois le système du droit français qui permet les testaments purement olographes. Les inconvénients qui en sont résultés ont amené le législateur néerlandais non seulement à exclure cette forme spéciale des testaments, mais encore à défendre aux Néerlandais d'employer cette forme à l'étranger. Si, par conséquent, un Hollandais en voyage fait à Paris un testament purement olographe, d'après le droit actuel les tribunaux étrangers reconnaîtraient peut-être ce testament que les Pays-Bas ne reconnaissent point. Or, il semble utile de rendre impossible un tel conflit de jurisprudence. C'est pourquoi les Délégués des Pays-Bas attacheraient du prix au maintien de l'alinéa 2.

M. Meili demande, si les Pays-Bas croient qu'il soit dans l'intérêt international qu'un Hollandais à l'étranger ne puisse faire un testament purement olographe. Le Délégué de Suisse voudrait donner aux disposants étrangers toutes les facilités possibles. Pourquoi maintenir cet alinéa, puisqu'il est en pleine contradiction avec l'alinéa 1er?

M. de Paepe fait ressortir que le testament purement olographe fait par un Hollandais à l'étranger conformément à la loi du lieu doit être reconnu comme valable partout, sauf seulement par les tribunaux hollandais.

Le Président répond que c'est là l'état des choses actuel, qui toutefois changera si l'alinéa 2 de cet article fait partie d'une convention internationale.

M. Missir dit qu'il est d'accord avec M. Meili en ce qui concerne la critique que celui-ci adresse à la disposition de la loi hollandaise relativement à la forme des testaments faits à l'étranger, mais il est d'avis que cette critique n'est pas utile, comme il s'agit ici d'arriver à un accord sur la codification du droit international privé. Il ne faut pas perdre de vue que la règle locus regit actum est une facilité que la loi de chaque Etat accorde à ses nationaux et que c'est là son fondement, même quand elle sera réciproquement reconnue par un accord international. Si un Etat

trouve convenable de refuser sur un certain point à ses propres nationaux l'avantage de cette facilité, il est en droit de le faire et les autres Etats n'ont aucun droit de s'en plaindre. Ils doivent au contraire avoir égard aux dispositions de la législation intérieure de chaque pays et leur trouver une place dans l'accord international, comme cela est fait dans le texte du projet.

M. Lainé estime que l'alinéa 2 peut être rattaché à la capacité du disposant, laquelle doit être régie par sa loi nationale.

M. Pierantoni déclare que la condition que pourront imposer à leurs ressortissants les Etats qui n'admettent pas le testament purement olographe lui paraît bien lourde, parce que les notaires étrangers ne sont pas au courant de la langue des disposants. Cependant, si les Pays-Bas ne sont pas disposés à modifier l'article 992 du code néerlandais, il s'abstiendra de voter la suppression, bien qu'en théorie il soit enclin à favoriser autant que possible la testamenti factio activa.

M. de Hammarskjöld fait observer que l'alinéa 3 de l'article lui paraît superflu après la règle exprimée à l'alinéa 1. En effet, si „les testaments des étrangers ont été reçus, conformément à leur loi nationale, par les agents diplomatiques ou consulaires de leur nation“ (alinéa 3), n'est-ce pas que ces testaments „satisfont aux prescriptions de la loi du pays auquel appartenaient les disposants“ (alinéa 1)? Le Délégué de Suède propose donc la suppression de l'alinéa 3, tout en ajoutant que, si cet alinéa était conservé, il faudrait préciser, comme il a été fait à l'alinéa 1, s'il s'agit de la loi nationale au moment du décès ou bien de la loi du pays auquel appartenait le disposant au moment où il a fait le testament.

Le Président déclare partager l'opinion ainsi émise.

Personne ne désirant plus la parole, on procède au vote.

L'alinéa 1 est adopté sans appel nominal.

L'alinéa 2 est adopté par huit voix contre deux et cinq abstentions.

Ont voté pour: l'Autriche, le Danemark, l'Espagne, la France, les Pays-Bas, la Roumanie, la Suède et la Norvège.

Ont voté contre: la Belgique et la Suisse.

Se sont abstenus: l'Allemagne, la Hongrie, l'Italie, le Portugal et la Russie.

Avant que l'alinéa 3 soit mis aux voix, M. van Cleemputte, Rapporteur, se déclare opposé à la suppression de cet alinéa. Il lui semble tout désirable d'énoncer expressément la compétence des consuls en matière testamentaire. L'alinéa 3 pourra prévenir des doutes. A l'égard des diplomates ou des consuls, il vaut mieux prévenir toutes difficultés de compétence.

M. Pierantoni est favorable au maintien de l'alinéa 3. Mais il croit nécessaire de faire résulter du procès-verbal qu'en confirmant dans l'article la validité des testaments diplomatiques ou consulaires, on ne veut pas mettre en doute la validité de certains testaments spéciaux, sanctionnés

par plusieurs codes, par exemple les testaments en cas de peste, les testaments faits en mer, etc., selon les articles 789 et suivants du code italien.

M. de Martens, Président de la Commission des successions fait ressortir que la Commission a compris sa tâche d'une double manière; en premier lieu, elle a proposé les règles nouvelles dont l'introduction dans le domaine du droit positif lui a paru nécessaire; et puis, elle a tâché de codifier ce qui est de droit actuel en vigueur en cette matière. C'est à cette dernière catégorie de propositions que se rattache l'alinéa 3 de l'article 2, pour lequel les conventions consulaires ont fourni le matériel.

L'alinéa 3 est mis aux voix et adopté par onze voix contre trois et une abstention.

Ont voté pour: l'Allemagne, l'Autriche, la Belgique, l'Espagne, la France, l'Italie, les Pays-Bas, le Portugal, la Roumanie, la Russie et la Suisse.

Ont voté contre: la Hongrie, la Suède et la Norvège.

S'est abstenu: le Danemark.

L'article 3 est adopté sans discussion en ces termes:

La capacité de disposer par testament ou par donation à cause de mort est régie par la loi nationale du disposant.

On passe à l'article 4:

La loi nationale du défunt ou du disposant est celle du pays auquel il appartenait au moment de son décès.

Néanmoins, la capacité du disposant est soumise aussi à la loi du pays auquel il appartient au moment où il dispose.

Toutefois, si le disposant avait dépassé l'âge de la capacité, fixé par la loi du pays auquel il appartenait au moment de la disposition, le changement de nationalité ne lui fait pas perdre cette capacité à raison de l'âge.

M. Dungs constate que les Délégués Allemands entendent l'alinéa 1er de l'article 4 dans ce sens que la dernière loi nationale décide aussi la question de savoir à quel moment la capacité — c'est à dire la capacité de droit — du disposant doit exister. Si, par conséquent, la cause de l'incapacité, par exemple une maladie mentale, s'est manifestée après que le testament a été fait, il dépend de la loi du pays auquel appartenait le disposant lors de son décès, si le testament doit être considéré comme valable ou non.

M. van Cleemputte, Rapporteur, de son côté tient à constater que l'article 4 n'a trait qu'à la capacité de droit, de loi, non pas à la capacité de fait. Si une personne saine d'esprit fait un testament valable, puis meurt fou, ce changement de sa capacité de fait ne touche en rien la validité de l'acte.

L'article est adopté sans vote.

On procède à l'examen de l'article 5:

La prohibition de disposer au profit de certaines personnes, soit d'une manière absolue, soit au delà de certaines limites, est régie par la loi nationale du disposant.

M. Töry dit que l'article donne lieu à poser la question quelle est la loi nationale du disposant. Est-ce la loi du pays auquel il appartenait au moment où il dispose, ou au moment de son décès? Pour résoudre la question dans le sens de l'article 4, le Délégué de Hongrie propose de changer les places des articles 5 et 4. Par ce changement il sera évident que la règle de l'article 4 s'applique tant aux articles 1, 2 et 3 qu'à l'article 5.

M. Dungs ne peut se rallier à la manière de voir de M. Töry, comme la prohibition visée concerne la matière, le contenu des actes, et non pas la capacité des disposants. Il entend la fin de l'article dans ce sens qu'elle vise la loi du pays auquel appartenait le disposant au moment de son décès, et propose de lui donner cette rédaction.

Le Président fait observer que d'après l'opinion de MM. van Cleemputte et Lainé la rédaction de l'article telle qu'elle est conçue dans l'avant-projet de la Commission ne peut viser que la loi du disposant au moment où il dispose.

M. van Cleemputte, Rapporteur, répond que M. Dungs veut qu'on statue expressément le contraire. Il cite l'exemple suivant: quelqu'un fait un legs à une personne qui plus tard se trouve être le médecin qui traite le disposant dans sa dernière maladie.

M. Missir met en évidence que la clause finale de l'article 5 ne peut viser que la loi du disposant au moment où la disposition est faite. A ce moment le légataire n'était pas encore son médecin pendant sa dernière maladie, et pour ce motif la prohibition ne peut être censée avoir existé à cette époque.

M. Dungs appelle l'attention sur ce que l'article 4 pourrait être interprété comme exigeant pour la validité du testament la capacité du disposant aux deux moments.

M. Missir répond que l'article 4 n'exige la capacité aux deux moments que parce que là il s'agit de la volonté du défunt. Il est absolument nécessaire que, jusqu'au décès, cette volonté soit respectée. Au contraire, il s'agit dans l'article 5 d'enlever, d'ôter la validité d'un testament ou d'une donation, et c'est justement pourquoi il faut juger l'existence de cet empêchement d'après la loi lors du moment où l'acte a lieu. Toutefois M. Missir croit qu'il serait utile de compléter la rédaction de l'article.

M. de Martens déclare comprendre l'article comme se rapportant à la loi du moment du décès du disposant, conformément aux vues des Délégués d'Allemagne.

M. Lainé expose qu'il faut bien distinguer entre la capacité de jouir d'un droit, et la capacité d'exercer ce droit.

M. Heemskerk demande pourquoi on n'exige pas dans l'article 5, comme dans l'article 4, la capacité aux deux moments?

M. Président fait observer à M. Heemskerk que ce système serait le plus rigoureux de tous pour les disposants.

M. van Cleemputte, Rapporteur, se range à l'opinion de M. Heemskerk, qu'il serait plus conséquent d'exiger aussi dans l'article 5 la capacité aux deux moments.

A la demande de M. de Martens, Président de la Commission, on vote d'abord sur la proposition allemande tendant à lire la clause finale de l'article ainsi: „par la loi du pays auquel appartenait le disposant au moment de son décès".

L'amendement est adopté par douze voix contre deux et une abstention.

Ont voté pour: L'Allemagne, l'Autriche, la Hongrie, la Belgique, le Danemark, l'Espagne, l'Italie, le Portugal, la Russie, la Suède, la Norvège et la Suisse.

Ont voté contre: les Pays-Bas et la Roumanie.

S'est abstenue: la France.

Puis la proposition de M. Heemskerk, tendant à exiger en outre la capacité au moment où l'acte a été fait, est mise aux voix et adoptée par dix voix contre deux et deux abstentions.

Ont voté pour: la Hongrie, la Belgique, le Danemark, l'Espagne, la France, l'Italie, les Pays-Bas, le Portugal, la Roumanie et la Russie.

Ont voté contre: l'Allemagne et l'Autriche.

Se sont abstenues: la Suède et la Norvège.

La rédaction est réservée au Comité de Rédaction.

M. Renault appelle l'attention de la Conférence sur ce qu'on n'a envisagé que les prohibitions prescrites en vue de protéger le disposant. Cependant, il faut aussi prévoir les cas où la prohibition tendrait à punir le gratifié. M. Renault demande si une pareille prohibition rentre dans l'article 5; il constate qu'elle n'est pas comprise dans l'article 6 tel qu'il est conçu actuellement.

Le Président répond qu'une telle prohibition doit être régie par la loi nationale du successible, et que le Comité de Rédaction fera de son mieux pour élargir la rédaction de l'article 6 de sorte qu'elle s'applique aussi au cas indiqué.

M. van Cleemputte, Rapporteur, relève que l'indignité de succéder doit être régie par la loi nationale du défunt. Il cite le cas de la personne condamnée à une peine diffamante, pour avoir attenté à la vie du de cujus.

L'article 5, tel qu'il a été modifié, est adopté sans appel nominal.

On passe à l'article 6.

La capacité des successibles, des légataires et des donataires est régie par leur loi nationale.

M. Meili estime que l'article 6 a besoin d'être amélioré. L'article mentionne la capacité des successibles et des légataires. En effet, on parle en allemand de la „Erbfähigkeit", mais ce mot n'implique pas une capacité proprement dite; il veut dire qu'une personne est apte à devenir héritier. Or, dans ce cas-là, ce n'est nullement la loi nationale des successibles qui doit être appliquée, mais la loi du défunt, du de cujus.

En d'autres termes, c'est l'article 1 qui régit ce rapport. Toute autre est la question concernant certaines prescriptions ayant trait au mineur, à la femme mariée, à l'interdit, à l'indignité, comme cela est du reste très bien expliqué dans le rapport. Il semble cependant au Délégué de Suisse que, pour écarter toute équivoque, il conviendrait de rédiger l'article 6 d'une façon un peu différente, par exemple en disant que: „les empêchements de recevoir des successibles, des légataires et des donataires, résultant de raisons personnelles, sont soumis à leur loi nationale".

Puis il a encore une observation à faire se rattachant à un tout autre ordre d'idées. C'est qu'il conviendrait de réserver la „capacité" de la main-morte, puisque dans ce dernier cas, c'est la loi du domicile qui seule peut être applicable.

Le Président dit que le premier point soulevé par M. Meili concerne une bien grave question qui ne peut être résolue incidemment.

A la demande du Président M. Meili répond qu'il laisse au Comité de Rédaction le soin d'examiner la question qu'il vient d'indiquer.

M. Lainé propose d'insérer après le mot: „régie" la clause suivante: „en tant qu'il s'agit de l'exercice de leurs droits."

Le Président dit que c'est là une question de rédaction; le Comité de Rédaction se chargera de la résoudre. Quant au second point dont vient de parler M. Meili, il lui semble que la main-morte trouve plutôt sa place dans l'article 8 qui vise les exceptions dérivant de l'ordre public.

M. Meili prie d'ajouter au texte une petite réserve pour la main-morte, si cela peut être fait.

M. Pierantoni dit qu'il votera pour l'article 6 mais tient à relever que, dans l'intention de la Conférence, les termes de cette disposition ne visent pas la capacité des corps moraux, des personnes juridiques, parce que ces personnes créées par la loi sont assimilées sous certains rapports aux personnes naturelles, mais elles restent soumises aux lois prohibitives.

L'article 6 est adopté, sauf rédaction et sauf considération s'il y aura lieu de faire une réserve pour la main-morte.

La suite de la discussion est renvoyée au lendemain à 2 heures, et la séance est levée à $4^3/_4$ heures.

Le Président:
Asser.

Le Premier Secrétaire;
J. J. Rochussen.

Les Secrétaires:

Beelaerts de Blokland. *T. R. J. E. Stoop.*
C. van Vollenhoven. *H. van Karnebeek.*

Annexe au Procès-verbal N° 4.

Rapport de la deuxième Commission*) sur les dispositions concernant les successions, les testaments et les donations à cause de mort.

I. Deux fois déjà, en 1893 et en 1894, une Commission, composée presque entièrement des mêmes membres, Vous a proposé, Messieurs, des règles tranchant les conflits de lois en matière de successions, de testaments et de donations à cause de mort; deux fois déjà le rapporteur d'aujourd'hui a été appelé à expliquer et justifier des propositions qui généralement n'ont guère varié que dans leur forme.

Vous connaissez d'ailleurs à fond, Messieurs, les délicates questions, que soulèvent les conflits dont il s'agit, et les solutions indiquées; plusieurs d'entre Vous ont concouru, avec un succès, qu'assuraient leur savoir, leur talent et leur renom, à faire accepter, par le monde du Droit, par l'opinion, par un grand nombre de Législatures et de Gouvernements, les principes adoptés, par Votre Commission et par la majorité de la Conférence, aux termes des rapports et des protocoles de 1893 et de 1894.

La plupart des articles aujourd'hui soumis à Votre examen sont en quelque sorte la répétition des textes que Vous aviez faits vôtres; s'ils ont subi quelques modifications, si des dispositions nouvelles ont été élaborées, cela a été surtout, pour donner, aux représentants de plusieurs Etats, des satisfactions inspirées par le désir, commun au Gouvernement des Pays-Bas et aux membres de la Conférence, de ménager des transactions destinées à faciliter le succès d'une utile et noble entreprise, objet de vives et universelles sympathies, objet d'augustes patronages, de généreux efforts et de sacrifices, surtout sur cette terre de Néerlande illustrée par les œuvres du Droit et de la Paix.

Il n'est donc pas besoin de longs développements.

Les textes suffiraient pour Vos travaux; grâce aux commentaires, que la plupart ont reçus, grâce à Vos délibérations, la portée des articles apparaîtrait clairement à ceux qui seront appelés à les appliquer. Ce rapport se bornera donc à caractériser, en quelques mots, l'œuvre de la majorité de Votre Commission; Vous n'exigez pas davantage du rapporteur, plusieurs des textes nouveaux ne répondant pas à ses opinions personnelles.

II. L'article 1 consacre, une fois de plus, le principe de l'unité de la succession sous le régime de la loi nationale du défunt; à la demande formelle des Délégués de plusieurs Etats, l'article dispose, que l'unité embrasse et que le régime concerne tous les biens quels que soient leur nature et le lieu où ils se trouvent.

Des membres ont fait leurs réserves ou proposé des restrictions en ce qui concerne les immeubles, lesquels, d'après les Codes de plusieurs Etats,

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*) Cette Commission était composée de MM. de Martens, Délégué de Russie, Président; Dungs, Délégué d'Allemagne; van Cleemputte, Délégué de Belgique, rapporteur; Matzen, Délégué de Danemark; Rahusen, Délégué des Pays-Bas; Missir, Délégué de Roumanie. M. Asser, Président de la Conférence, a régulièrement pris part aux travaux de la Commission.

sont régis par la loi du lieu de la situation, lex rei sitae. Tantôt la restriction, quant aux immeubles, a été absolue, du moins, pour l'époque présente, et plus à raison de circonstances spéciales que pour des considérations de doctrine; tantôt la restriction était relative, en ce sens, par exemple, que les successions seraient soumises à la loi nationale du défunt, en ce qui concerne les immeubles, dans la mesure où cette loi n'est pas en contradiction avec le droit public, l'ordre public, ou l'intérêt social du pays de la situation, conformément à l'article 11 du Programme communiqué par la Commission néerlandaise.

C'est l'article 8 nouveau qui dispose à cet égard, Votre Commission ayant décidé de statuer, lors de l'examen du dit article 11, et celui-ci étant, par suite de la suppression de plusieurs textes, devenu l'article 8.

Bornons-nous donc pour le moment à deux observations:

Voici la première.

L'article 1 nouveau, dont l'alinéa deuxième dispose que la validité intrinsèque et les effets des testaments et des donations à cause de mort sont régis par la loi nationale du disposant, exprime, par une seule disposition, ce qui précédemment était dit en deux articles; il marque mieux le champ d'application de la règle.

Il est superflu de répéter ce qui précédemment a été expliqué dans les rapports, conformément à la doctrine très généralement reçue, (Voir surtout: Actes de la Conférence, session de 1893, 1re partie, page 74; Actes de 1894, pages 125 es 126). „Il s'agit bien de la succession dans son ensemble, de la transmission du patrimoine, unité idéale, embrassant les droits réels et personnels, actifs et passifs, ou, pour mieux dire, de la substitution de l'héritier à la personnalité même du de cujus, de la continuation de la personnalité de ce dernier par l'héritier; il s'agit, comme le dit M. Lainé, de la transmission du patrimoine et de ce qui en dépend.

„Cette transmission comprend, écrit-il, la détermination des héritiers et de leur qualité, l'ordre dans lequel ils sont appelés et les parts qui leur sont attribuées, les rapports qu'ils doivent effectuer, les faits qui leur ouvrent la succession, la saisine, qui, selon leur qualité, les investit d'une manière plus ou moins complète, l'option qui leur est accordée, leurs obligations envers les créanciers du défunt ou les légataires. A la transmission légale du patrimoine, il faut évidemment joindre l'exhérédation qui la supprime, la quotité disponible qui la réduit, la réserve qui, pour une certaine part, en est la garantie. Il faut encore“ (du moins quant aux testaments et aux donations à cause de mort, desquels seuls s'occupent les dispositions proposées) „y ramener les modes de disposer à titre gratuit et les conditions, dont ils sont affectés, ... car toute reconnaissance, extension ou restriction du droit pour le propriétaire de disposer de ses biens réagit sur le droit de les recueillir, que les héritiers ont reçu de la loi.“

L'article 1 doit cependant être combiné avec l'article 11.

La deuxième observation est celle-ci. Le texte nouveau a substitué, dans l'alinéa deuxième, les mots „validité intrinsèque“ au mot „substance“,

Ce dernier a paru trop vague pour ne pas donner lieu à des équivoques dans l'application.

Sans doute la substance peut s'entendre du contenu, „Inhalt“ allemand, „inhoud“ néerlandais, opposé à acte, à „formalités“, à ce qui est extrinsèque. Mais cette explication est insuffisante. Il ne s'agit pas ici de dire ce qui régit l'interprétation du testament, de la donation, choses à juger en fait. Si la substance d'un testament est, pour trancher un conflit entre lois, soumise à la loi nationale du disposant, c'est pour que la validité soit jugée au point de vue légal, par exemple, en ce qui concerne l'admission de certaines conditions, la validité de certaines substitutions, la légalité de certains legs. Eh bien, cela sera régi par la loi nationale du disposant. L'expression validité intrisèque est celle du code italien, des propositions ou des résolutions de divers congrès, du rapport de M. van Berchem au nom de la Commission belge instituée pour reviser le Code Civil; elle est employée par plusieurs auteurs.

III. Les articles 3, 4, 5 et 6 concernent la capacité du disposant. Sauf un amendement pour un cas très spécial et très rare, amendement dont il sera parlé plus loin, ces articles ne diffèrent pas, quant au fond, des textes adoptés et commentés en 1893 et en 1894.

L'article 6, repris d'après ces textes, en parlant de la capacité du successible, du légataire, du donataire, vise sa capacité personnelle son état à lui. „La loi nationale du défunt se combine parfois, dans l'application, avec la loi personnelle ou nationale des héritiers . . . . ainsi, la vocation héréditaire des parents et l'ordre successoral sont établis par la loi nationale du défunt, règle de la succession; mais la qualité de parent dépend de la loi personnelle du successible, parce que celle-ci régit sa filiation. Le statut personnel du successible règle son état, sa capacité générale, sa capacité spéciale de succéder et celle de pose lui-même, de poser seul, les actes relatifs à la succession, au partage et à la liquidation.“ Ainsi, le successible, condamné pour avoir donné ou tenté de donner la mort au de cujus, est indigne et exclu de la succession; c'est l'application de la loi successorale (art. 727 C. C.). Successible, il est condamné, du chef du meurtre d'un tiers, à une peine criminelle; il succède, mais il est incapable de poser un acte quelconque pour recueillir une succession, un legs; cela tient au statut personnel que lui impose la loi pénale. Un parent, un fils est appelé à succéder (loi nationale du défunt); il est incapable même de succéder, parce qu'il est frappé de mort civile (statut personnel du successible qui ne peut être héritier). L'incapacité du mineur, celle de la femme mariée, de l'interdit, de la personne mise sous conseil judiciaire, sont régies par la loi nationale des personnes.

L'amendement auquel il est fait allusion plus haut, concerne l'article 4 du projet primitif. La règle est que le testateur doit être capable, et au moment de son décès, et au moment où il dispose. Il s'agit, bien entendu, de la capacité de droit. Un de nos très honorés collègues, M. Dungs, a signalé à l'attention de la Commission les conséquences d'un changement de nationalité, quant à la condition de capacité dans le chef du disposant

d'après la loi nationale à laquelle il est soumis lors de son décès. Supposons, dit M. le Délégué d'Allemagne, qu'un Espagnol qui, capable, d'après la loi de son pays, à 14 ans, ait testé, et qu'il devienne sujet allemand; il ne sera plus capable avant l'âge de 16 ans et son testament sera nul! S'il meurt avant d'avoir dépassé l'âge de 16 ans, il n'a pas pu faire un autre testament.

Ces conséquences ont paru trop rigoureuses à la majorité, dans un cas où certes le simple changement de nationalité d'un testateur, présumé d'après la loi de sa famille, de sa race peut-être, suffisamment développé et intelligent, ne peut pas le faire considérer comme devenu moins intelligent; on a ajouté que l'hypothèse ne se réalisera guère et qu'il n'y a pas de danger à concéder une exception de faveur, pour le cas où l'incapacité survenue ne tiendrait qu'à l'âge; c'est ce qui a fait ajouter l'alinéa deuxième de l'article 4.

IV. Les articles 2 et 7 prouvent que, comme il a été signalé déjà en 1893 et en 1894, le principe que les successions, les testaments et les donations à cause de mort sont soumis à la loi nationale du défunt, loin d'être exclusif, se concilie avec la lex loci actûs, la lex loci contractus, la lex rei sitae, la lex fori, dans une mesure aussi juste que juridique (Voir Actes de la Conférence de 1893, 1re partie, page 78; 1894, pages 126 et 129).

V. L'article 8 concerne les réserves et les restrictions que, dans des mesures diverses, tous, dans la Conférence, aujourd'hui comme en 1893 et en 1894, acceptent d'apporter à la règle que la loi nationale du défunt régit la succession.

Dans leur ensemble, les jurisconsultes, les instituts et les congrès, les législations et les Gouvernements qui ont adopté le principe énoncé à l'article 1er, n'excluent de son application que les cas où elle porterait atteinte, dans les pays où cette application devrait avoir lieu. à l'ordre public, à un droit social, à un intérêt social. N'est-ce pas ce qu'a voulu la Conférence en 1893 et en 1894? Sans doute son protocole de 1894 porte: „Nonobstant les articles qui précèdent, les tribunaux d'un pays n'auront pas égard aux lois étrangères, dans le cas où leur application aurait pour résultat de porter atteinte, soit au droit public de ce pays, soit à ses lois concernant les substitutions ou fidéi-commis, la capacité des établissements d'utilité publique, la liberté et l'égalité des personnes, la liberté des héritages, l'indignité des successibles ou légataires, l'unité du mariage et les droits des enfants illégitimes.“ Mais il tombe sous le sens que l'objet de toutes ces lois est d'ordre public ou d'intérêt social: ce sont ces lois qu'habituellement on cite, lorsqu'on veut donner des exemples de dispositions considérés comme garantissant les intérêts de l'Etat, de la Société. On reconnaît, plus ou moins marqué, ce même caractère aux lois indiquées dans les notes ou rapports distribués aux membres de la Conférence, lors de l'ouverture de la présente session. C'est ainsi que le rapport de notre très honoré collègue, le Délégué du Gouvernement Espagnol, dit fort bien, en parlant même de lois appartenant

au droit civil: „tous ces préceptes, quoique formant partie des lois considérées comme civiles, sont indubitablement inspirées par des motifs d'ordre social ou d'intérêt public, et dans cette supposition, on a toujours été d'avis qu'ils sont applicables à toutes sortes de successions testamentaires ou légales, y compris celles qui s'ouvrent par la mort d'un étranger.“ (Documents relatifs à la 3ième Conférence“, page 150).

Deux choses sont plus généralement, chaque jour, acceptées par les jurisconsultes. Et d'abord que „toute loi de succession n'est pas nécessairement une loi politique, — que l'intérêt public ou social du pays de la situation des immeubles n'y est le plus souvent pas engagé, — que la transmission du patrimoine est un fait de droit privé; — que la loi successorale, comme l'ont mis en lumière MM. van Berchen, Fiore, Laurent, Asser, Lainé et tant d'autres, est une loi personnelle; — que la loi de la succession doit être celle à laquelle sont soumis la personne et les rapports de famille.“ Ensuite, que, comme le dit notre très honoré collègue M. Missir, dans un mémoire justement remarqué: la souveraineté des Etats n'est en principe „pas liée à l'idée de la possession territoriale“ . . . . „Aujourd'hui on admet l'application des lois étrangères en justice sur son territoire dans l'intérieur de tout pays.“ . . . . „Le point donc sur lequel nous devons concentrer tous nos efforts serait de déterminer la conviction du législateur, dans tous les Etats qui conduisent les progrès de la civilisation, à reconnaître que les intérêts publics de ces pays ne sont nullement atteints, si l'on écarte de la loi positive la disposition statutaire relative aux immeubles; . . . . de le convaincre qu'il n'est pas un seul intérêt général possible, une seule disposition de garantie sociale que nous ne puissions défendre, sans avoir besoin d'étendre l'application de la loi territoriale dans la sphère des intérêts privés, et écarter, dans les mêmes cas, l'application normale de la loi étrangère, qui doit les protéger, quand des droits appartenant à des étrangers sont en jeu.“ („Documents“, page 174.)

Cela étant, ne suffit-il pas de proclamer, dans le texte, le principe général, tel qu'il est formulé dans plusieurs législations en vigueur, comme la loi italienne, dans des projets de loi, comme le projet belge de revision du Code civil, dans les résolutions de plusieurs congrès et de l'Institut de Droit International?

Ne peut-on, le principe étant proclamé, en laisser l'application à la jurisprudence? Bien des lois et des traités ont abandonné ce pouvoir à la magistrature.

La majorité de la Commission s'est ralliée à la proposition de la Commission néerlandaise et a voté l'article 8 qui Vous est soumis.

Pour justifier cette résolution, on invoque qu'il vaut mieux ne pas laisser à l'arbitraire des juges de chaque pays le soin et le pouvoir de décider ce qui dans ce pays est d'ordre public, d'intérêt social; qu'il est plus sage, plus respectueux de la souveraineté des Etats, d'appeler les législatures respectives à déterminer positivement quelles sont les dispositions, qui feraient échec à l'application, sur le territoire respectif, de la

loi nationale du défunt ou du disposant, et devraient être déclarées par un texte formel applicables aux successions et aux testaments des étrangers. Est-il défendu de croire que le désir de faciliter une solution, par des concessions même importantes, a influé sur la résolution de la majorité?

L'article proposé semble bien avoir cette portée qu'aucun des Etats contractants ne pourrait déclarer la loi territoriale applicable aux successions des étrangers, déclarer disposition d'ordre public ou social celle portant que les immeubles dépendant de ces successions sont, en principe, régis par la loi successorale du territoire. Mais, cet article doit-il avoir et conserver ce sens, que les Etats pourront déclarer applicables aux successions ou testaments des étrangers de lois qui ne garantissent aucun intérêt public, aucun intérêt social? On a répondu: chaque législature appréciera quelles sont les lois territoriales assez importantes pour faire l'objet d'une disposition expresse, les déclarant applicables aux successions et aux testaments d'en principe elles ne régissent pas, et il faut présumer que cette importance sera appréciée au point de vue de l'intérêt public ou social du pays.

C'est ce qui explique que, d'après la majorité, l'article 8 proposé ne doit pas mentionner „le droit public", ni exprimer qu'il s'agira exclusivement de lois soit prohibitives, soit impératives, d'ordre public, d'intérêt public ou social. Est-ce que le texte complété par l'addition de ces mots, ne donnerait pas à une règle de droit une expression plus conforme à la vérité juridique et à la bonne foi?

C'est ce que la Conférence aura à décider.

VI. L'article 9 est une conséquence du principe de l'unité de la succession, sous le régime d'une loi successorale unique: il consacre, à ce point de vue, l'égalité des successibles.

Il a été adopté à la suite d'indications de notre très honoré collègue M. Roguin, Délégné de Suisse.

Pour donner au texte une portée plus générale, prévenant des incertitudes dans l'application pratique, on a introduit les mots: „autre inégalité" et on visé même les donations et les testaments.

VII. L'article 11 a pour objet de donner satisfaction aux observations de plusieurs de nos très honorés collègues redoutant que l'application radicale, sans précautions de l'article 1 c'est-à-dire de la loi nationale du défunt, puisse avoir des résultats contraires à la justice, en ce qui concerne soit l'obligation, la responsabilité ultra vires hereditatis, d'un successible, dont l'acceptation ne serait pas certaine, soit les droits des créanciers.

VIII. La Commission, sur la proposition de M. Misser, demande à la Conférence d'examiner, avec la plus bienveillante et la plus sérieuse attention, le vœu que tout au moins des stipulations internationales assurent la compétence des tribunaux du lieu de l'ouverture de la succession, et déterminent les affaires, que ces tribunaux pourraient juger au plus grand avantage des intérêts engagés. A ce point de vue, il importe de signaler les articles 47 et 52 de la loi belge du 25 mars 1876, le récent

traité franco-belge, plusieurs conventions internationales signalées dans les Actes de la Conférence (session de 1893, 2ième partie), la rapport de MM. de Paepe, van den Bulcke, et celui de M. van Cleemputte, relatifs au traité franco-belge.

En conséquence la Commission soumet à la Conférence les résolutions suivantes:

Avant-Projet d'une Convention pour régler les conflits de lois en matière de successions, de testaments et de donations à cause de mort.

Article 1. (V. articles 1 et 2 du Projet de Programme.)

Les successions sont soumises à la loi nationale du défunt, quels que soient la nature des biens et le lieu où ils se trouvent.

La validité intrinsèque et les effets des dispositions testamentaires ou des donations à cause de mort sont régis par la loi nationale du disposant.

Article 2. (V. article 3 Proj. de Progr.)

Les testaments et les donations à cause de mort sont valables, en ce qui concerne la forme, s'ils satisfont aux prescriptions, soit de la loi du lieu où ils sont faits, soit de la loi du pays auquel appartenait le disposant au moment de la confection de ces actes.

Néanmoins, lorsque pour les donations ou pour les testaments faits par une personne hors de son pays, la loi nationale de cette personne exige, comme condition substantielle, que l'acte ait une forme déterminée par cette loi nationale, le testament ou la donation ne peut être fait dans une autre forme.

Sont valables en la forme les testaments des étrangers, s'ils ont été reçus, conformément à leur loi nationale, par les agents diplomatiques ou consulaires de leur nation. La même règle s'applique aux donations à cause de mort.

Article 3. (V. artile 2 Proj de Progr.)

La capacité de disposer par testament ou par donation à cause de mort est régie par la loi nationale du disposant.

Article 4. (V. article 4 Proj. de Progr.)

La loi nationale du défunt ou du disposant est celle du pays auquel il appartenait au moment de son décès.

Néanmoins, la capacité du disposant est soumise aussi à la loi du pays auquel il appartient au moment où il dispose.

Toutefois, si le disposant avait dépassé l'âge de la capacité, fixé par la loi du pays auquel il appartenait au moment de la disposition, le changement de nationalité ne lui fait pas perdre cette capacité à raison de l'âge.

Article 5. (V. article 5 Proj. de Progr.)

La prohibition de disposer au profit de certaines personnes, soit d'une manière absolue, soit au delà de certaines limites, est régie par la loi nationale du disposant.

Article 6. (V. article 6 Proj. de Progr.)

La capacité des successibles, des légataires et des donataires est régie par leur loi nationale.

Article 7. (V. article 8 Proj. de Progr.)

Les immeubles héréditaires et ceux légués ou donnés sont soumis à la loi du pays de leur situation, en ce qui concerne les formalités et les conditions de publicité, que cette loi exige pour le transfert, la constitution ou la consolidation des droits réels vis-à-vis des tiers.

Article 8. (V. article 11 Proj. de Progr.)

Nonobstant les articles qui précèdent, la loi nationale du défunt ne sera pas appliquée lorsqu'elle serait de nature à porter atteinte, dans le pays où l'application devrait avoir lieu, soit aux lois impératives soit aux lois prohibitives, déclarées par une disposition expresse applicables aux successions et aux testaments des étrangers.

Est également réservée l'application des lois territoriales qui ont pour but d'empêcher la division des propriétés rurales.

Les Hautes Parties contractantes s'engagent à se communiquer les lois prohibitives ou impératives au sujet desquelles elles auraient fait usage de la faculté stipulée à l'alinéa 1, ainsi que les lois territoriales dont il s'agit dans le second alinéa.

Article 9. (Article nouveau.)

Il ne sera fait aucun prélèvement ni admis aucune inégalité au profit des nationaux des Etats contractants à raison de la seule différence de nationalité des successibles, des légataires ou des donataires appartenant à ces Etats.

Article 10. (V. article 12 Proj. de Progr.)

Les autorités de l'Etat sur le territoire duquel la succession s'est ouverte prendront les mesures nécessaires pour assurer la conversation des biens héréditaires, à moins qu'il n'y soit pourvu, en vertu de conventions spéciales, par les agents diplomatiques ou consulaires de la nation à laquelle le défunt appartenait.

Dispositions générales.

Article 11. (Article nouveau.)

Les Etats contractants sont d'accord que chacun d'eux conserve sa liberté de disposer en ce qui concerne l'acceptation sous bénéfice d'inventaire, la renonciation et la responsabilité des héritiers à l'égard des créanciers.

Article 12. (Article nouveau.)

La présente Convention ne s'applique que dans le cas où le défunt, au moment de son décés, appartenait à un des Etats contractants.

Voeu.

(Proposition de M. Missir.)

Le tribunaux du dernier domicile du défunt où la succession est ouverte restent compétents à prendre les mesures conservatoires concernant les biens successoraux et à liquider la succession.

Ils restent également compétents à juger, jusqu'au partage effectué, toutes les actions et contestations qui peuvent avoir lieu entre les ayants-droit aux biens successoraux.

Le Rapporteur: *van Cleemputte.*

Le Président: *Martens.*

Procès-verbal n° 5. (Séance du 12 juin 1900.)

La séance est ouverte à 2 heures.

Sont présents:

M. M. Asser, Président, Dungs, Kriege, Schumacher, Töry, de Paepe, van Cleemputte, van den Bulcke, Matzen, Oliver y Esteller, Renault, Lainé, le baron Galvagna, Pierantoni, Feith, Heemskerk, Ort, le comte de Selir, Missir, de Martens, Goussakowsky, de Hammarskjöld, Beichmann, Meili et Roguin.

L'ordre du jour comporte l'examen de l'article 7 de l'avant-projet sur les successions, les testaments et les donations à cause de mort.

Cet article est conçu en ces termes:

Les immeubles héréditaires et ceux légués ou donnés sont soumis à la loi du pays de leur situation, en ce qui concerne les formalités et les conditions de publicité, que cette loi exige pour le transfert, la constitution ou la consolitation des droits réels vis-à-vis des tiers.

Le Président fait observer que l'article vise aussi la question de la saisine laquelle, selon l'avis de M. Lainé, n'y était pas prévue assez clairement. Le Comité de Rédaction verra si l'on peut faire mieux ressortir cette pensée en modifiant la rédaction.

M, van Cleemputte, Rapporteur, croit utile de signaler dès maintenant qu'on pourrait ajouter, par exemple, et sauf revision, les mots: „mise en possession".

Le Président répond qu'il vaut mieux renvoyer cette proposition, qui regarde plutôt la forme, au Comité de Rédaction. Il fait en outre remarquer aux Délégués qui tiennent à l'application de la loi territoriale

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*) Voir l'annexe au Procès-verbal n° 4.

sur les immeubles, que l'article 7 constitue une grande garantie et une concession à leurs désirs.

M. van Cleemputte, Rapporteur, dit que le Délégué d'Espagne est d'avis que le texte de l'article est trop restrictif. M. Oliver y Esteller aimerait que le cas de la perte d'un droit réel y fût prévu. Peut-être pourrait-on ajouter: „l'extinction d'un droit réel".

Le Président répond que le Comité de Rédaction prendra en considération ces observations.

On procède à l'examen de l'article 8:

Nonobstant les articles qui précèdent, la loi nationale du défunt ne sera pas appliquée lorsqu'elle serait de nature à porter atteinte, dans le pays où l'application devrait avoir lieu, soit aux lois impératives soit aux lois prohibitives, déclarées par une disposition expresse applicables aux successions et aux testaments des étrangers.

Est également réservée l'application des lois territoriales qui ont pour but d'empêcher la division des propriétés rurales.

Les Hautes Parties contractantes s'engagent à se communiquer les lois prohibitives ou impératives au sujet desquelles elles auraient fait usage de la faculté stipulée à l'alinéa 1, ainsi que les lois territoriales dont il s'agit dans le second alinéa.

M. Lainé désire proposer deux amendements au premier alinéa. Le premier consiste en une modification de forme. Comme la restriction visée par cet alinéa n'est que facultative, on devrait remplacer les mots: „ne sera pas appliquée" par: „pourra ne pas être appliquée".

Le Président croit qu'il y a un malentendu. La rédaction telle qu'elle est comporte que la loi nationale sera appliquée, à moins qu'elle ne soit exclue par une disposition expresse de la loi. La rédaction de M. Lainé, par contre, donnerait aux tribunaux le pouvoir de décider s'il y a lieu d'appliquer la convention. Ce système est inadmissible. La faculté dont il s'agit ne peut être accordée qu'à la législation.

M. Lainé explique que sa seconde observation regarde le fond du même alinéa. Le Délégué de France propose de retrancher du texte rédigé par la Commission le dernier membre de phrase de l'alinéa 1 ainsi conçu: „déclarées par une disposition expresse applicables aux successions et aux testaments des étrangers", et de terminer cet alinéa par les mots: „d'un caractère absolu." A l'appui de cet amendement, il dit:

La disposition consistant à demander aux Etats contractants qu'ils énumèrent les cas où la loi nationale du défunt sera écartée sur leur territoire aurait, à la vérité, l'avantage de donner à cet égard une certitude. Mais elle aurait aussi plusieurs inconvénients qui, à mes yeux, l'emportent sur cet avantage.

En premier lieu, ce serait une tâche très malaisée que l'on demanderait aux Etats d'accomplir; car, en ce qui concerne les dispositions locales d'ordre public ayant ce caractère au point de s'opposer à l'application des lois étrangères, il y a des questions fort délicates à résoudre. L'accomplisse-

ment de cette tâche pourrait avoir pour effet de retarder longtemps l'adhésion des Etats à la Convention projetée.

En second lieu, les Etats qui, en adhérant à la Convention, renonceront à leur loi ou à leur jurisprudence actuelle, entendront ne le faire qu'avec beaucoup de prudence. Par conséquent, ils feront une énumération aussi complète que possible des cas dans lesquels il leur semblera que l'application d'une loi étrangère serait contraire à l'ordre public. Il est sérieusement à craindre qu'ils se soient, à cet égard, plus rigoureux que ne le seraient leurs tribunaux.

Enfin, l'œuvre qu'ils feront ainsi sera pour un assez long temps définitive; car il pourra fort bien arriver que la Convention, faite pour cinq ans, ne soit pas dénoncée, pour des raisons diverses, alors même que l'on y aura constaté des défauts graves. Et alors voici ce qui se produira: des questions dont la solution, dans chaque pays, dépend des mœurs et des idées du jour, c'est-à-dire d'une cause essentiellement contingente et variable, se trouveront, à tel moment donné, résolues sous une influence qui n'existe plus et contrairement à l'opinion publique actuelle. Cet inconvénient ne se produirait pas si on laissait aux juges le soin de statuer, au jour le jour, conformément aux idées ambiantes. La condification a ses anvantages, mais aussi ses dangers; en cette matière, les dangers l'emporteraient sur les avantages.

M. Kriege fait la déclaration suivante: Les Délégués d'Allemagne demandent le maintien de la rédaction de l'alinéa 1er de l'article 8, telle qu'elle a été proposée par la Commission conformément à l'amendement de la Commission Néerlandaise à l'article 11 du Projet de Programme. D'après les instructions qu'ils ont reçues de leur Gouvernement, l'Allemagne ne pourrait accepter une disposition laissant aux autorités locales de chaque Etat la faculté de ne pas appliquer les prescriptions de la Convention pour le motif qu'elles seraient contraires à l'ordre public. Il est vrai que l'on ne pourra se passer d'une disposition de la législation intérieure défendant l'application des lois étrangères qui seraient contraires aux bonnes mœurs ou aut but des lois du pays. Mais insérer une pareille disposition dans une Convention irait à l'encontre de deux principes qu'il importe d'observer quand il s'agit de conclure un traité. Ces principes sont la réciprocité et la certitude en ce qui concerne l'application du traité.

Pour ce qui touche la réciprocité, il serait désirable, du point de vue théorique, que des dispositions, telles que les contient l'article 8, fussent, elles-aussi, exclues. Cependant, il est inévitable de faire quelques concessions à la pratique parce que, en matière de successions, plusieurs législations contiennent des dispositions qui sont, dans d'autres pays, considérées comme contraires à l'ordre public. Il en est d'autant plus important pour chaque Etat contractant de savoir jusqu'à quel point les autres Etats tiendront compte de ces lois. Cela lui est nécessaire pour régler sa propre conduite, notamment quand il s'agit de prolonger la durée de la Convention. De même, la stricte observation des dispositions de la Convention sera mieux garantie s'il appartient, non aux différentes autorités locales, mais au

pouvoir législatif, responsable et soumis à la critique publique, de statuer en quelle mesure et dans quels cas les lois étrangères ne seront pas respectées.

En second lieu la proposition de la Commission permanente belge (voir „Documents“ page 86) et du Délégué de France compromettrait la certitude en ce qui concerne l'application de la Convention. Le but principal des Conventions à conclure est d'établir d'une manière indubitable les cas dans lesquels les ressortissants d'un des Etats contractants peuvent être assurés de se voir appliquer leur loi nationale dans un autre de ces Etats. On sera bien loin de cette certitude si la faculté de ne pas appliquer cette loi nationale, pour le motif qu'elle serait contraire à l'ordre public, était laissée aux autorités locales étrangères. Une pareille disposition mettrait en danger le but principal de la Convention. L'Allemagne, en tous les cas, n'aurait plus aucun intérêt à y participer. On ne peut nier que pour certains Etats la réglementation légale des cas où le droit étranger sera applicable présentera des difficultés, mais il n'en faut pas moins suivre ce système qui seul peut assurer une application uniforme et certaine de la Convention.

M. van Cleemputte, Rapporteur, observe que tout le monde est d'accord pour reconnaître qu'il s'agit, dans cet article, uniquement des lois d'ordre public et d'intérêt social. Il n'y a d'ailleurs nulle raison de s'étonner de cet accord; nombre de jurisconsultes et les plus distingués ont exprimé la même pensée qu'on retrouve consacrée dans les textes des lois italienne et espagnole et dans biens d'autres, comme dans les résolutions des Instituts et des Congrès. C'était aussi la pensée de la Conférence en 1893 et en 1894. Le Rapporteur croit qu'il serait désirable de l'énoncer encore expressément dans le texte du présent article, en ajoutant à l'alinéa 1er que l'on vise seulement les lois d'ordre public et d'intérêt social. Ce sera le meilleur moyen d'empêcher que le principe de l'unité des successions ne soit écarté de fait par une série de lois que des différents Etats pourraient déclarer applicables en retirant ainsi ce qui a été donné par l'article 1er. De cette manière nous éviterons que l'on retire d'une main ce qu'on a accordé de l'autre. On rassurera justement MM. les Délégués Allemands. Nous prouverons une fois de plus que nous avons voulu éviter l'équivoque.

Cependant, la question se pose si l'on maintiendra le système de l'alinéa premier, c'est-à-dire une loi ou des lois déclarant que dans l'Etat, qui les édicte le statut successoral étranger ne pourra faire échec à telle et telle loi déterminée expressément. Cette détermination serait faite par le législateur; ce n'est pas le juge qui dirait que telle loi successorale étrangère ne sera pas appliquée parce que son application heurterait des lois locales d'ordre public ou d'intérêt social. M. Lainé préfère que ce soit le juge qui en décide; mais M. Lainé se sert d'expressions qui demandent une explication.

M. van Cleemputte demande si par les mots: „d'un caractère absolu“ M. Lainé a voulu dire que ces lois ne regardent que l'ordre public et l'intérêt social.

M. Lainé répond que telle était exactement sa pensée. Il avait cru que les expressions du texte présenté par la Commission étaient trop vagues; c'est pour cette raison qu'il en a proposé un autre qui vise clairement les lois prohibitives et impératives d'un caractère social. Il est donc quant au fond parfaitement d'accord avec le Rapporteur.

M. van Cleemputte, Rapporteur, reconnaît qu'une observation de M. Lainé l'a beaucoup frappé: c'est la grande difficulté que causera aux Etats l'obligation de faire le catalogue de toutes les lois prohibitives ou impératives d'ordre public. On commencera par étudier la matière au Ministère, on désignera des commissions spéciales qui parcourront toutes les lois civiles, administratives et commerciales; des avocats, des députés, des magistrats et des professeurs s'en occuperont. Ce sera une besogne très grave et très difficile. Ensuite les Parlements en seront saisis: les idées politiques et les idées sociales du jour compliqueront l'examen. Il y a là un grand danger, un danger tout au moins aussi grand que celui de laisser la décision à la magistrature.

M. van Cleemputte est d'avis qu'une interprétation uniforme serait le mieux garantie par le terme général: „ordre public et intérêt social." Certes, il peut y avoir des divergences de vues, mais il n'est nullement à craindre qu'elles présenteront un caractère sérieux.

La formule se trouve dans beaucoup de traités et de lois qui jamais n'ont été mal interprétés. Il y a par exemple le récent traité franco-belge; on y a réservé ce qui est „d'ordre public" et „d'intérêt social", ce qu'on n'a désigné que par ce terme général. Eh bien, personne ne s'est effrayé de ces mots. Les Codes déclarent nulles les conventions contraires soit à l'ordre social ou public, soit aux bonnes mœurs, sans rien définir. On laisse juger la magistrature.

Il faut choisir celui des deux systèmes qui présente le moins de dangers. Si l'on se décide à garder la rédaction proposée on doit s'attendre à voir les travaux de la Conférence, en suspens pendant des années. Si l'on veut assurer le succès de la Conférence il sera donc de beaucoup préférable de se tenir à la pratique existante. C'est pourquoi M. van Cleemputte recommande l'adoption de la formule large et générale.

M. Pierantoni rappelle que depuis le moment où l'Institut de Droit International, sur le rapport de M.M. Mancini et Asser, étudia un projet de codification de droit international privé, un grand nombre de jurisconsultes firent opposition à la tâche remise aux juges de déclarer, dans chaque cas particulier, quelles étaient les dispositions des lois regardant l'ordre public et les bonnes mœurs. — Surtout le Code Italien dans son article 8 fut l'objet des attaques, des critiques. Toute une littérature se forma dans le but de réduire la liberté des juges. Abstraction faite des opinions des auteurs, il faut se rappeler que, pour donner satisfaction à la pensée de limiter l'action des juges, la Conférence de 1894 adopta l'article 11, qui tâche de préciser les exceptions à la règle de la reconnaissance du droit étranger. (Voir Actes de la Deuxième Conférence, page 123.)

M. Pierantoni s'est appliqué à faire ressortir que les lois d'ordre public, les lois prohibitives, étaient déterminées dans les codes, et que dans quelques cas seulement l'appréciation restait aux juges; il a indiqué aussi le danger que présentait l'adoption de l'article 11, parce qu'il était impossible de comprendre dans les mots adoptés toutes les fois étrangères.

Dans cette troisième Conférence la Commission a adopté une nouvelle rédaction. Elle engage les Gouvernements à se communiquer les lois prohibitives ou impératives.

On a fait à présent des objections qui ne lui paraissent pas suffisantes pour faire repousser ou modifier l'article. On a dit que la tâche est difficile, longue et presque impossible. Mais les textes les lois, les motifs qui les ont fait naître, la jurisprudence existante, sont un guide certain pour les Gouvernements. M. Pierantoni voit un avantage dans le système proposé, parce que les Gouvernements, qui doivent faire approuver la Convention par une loi, pourront faire disparaître les divergences soulevées sur certaines questions par la magistrature, et donner à liste des lois prohibitives ou impératives, en écartant ainsi ponr l'avenir l'incertitude de la jurisprudence.

Il est même réservé aux Etats de compléter les cas de prohibitions et d'amender les lois impératives. Le Délégué d'Italie n'approuve pas l'amendement proposé par M. Lainé, parce que l'expression créerait d'autres équivoques. Il prie la Conférence d'adopter l'article sans modification.

M. Missir trouve que le proposition de la Commission Néerlandaise constitue une étape dans les progrès du principe de l'unité des successions, une phase transitoire de la lutte entre l'idée de soumettre les successions à la loi du lieu et la nécessité de régler les successions, comme unités, par la loi nationale du défunt. Les termes pour concilier ces deux exigences ont été soumises à de différentes controverses. On a essayé en 1894 tous les moyens d'y prévoir dans la Convention, mais on n'a pas abouti. En vue des inconvénients de tous ces systèmes, l'idée de la Commission Néerlandaise est très heureuse. Du moment où la loi territoriale vient à l'encontre du régime successoral, il faut selon la proposition néerlandaise que chaque Etat précise à quel point il veut faire opposition à la loi étrangère.

Le Délégué de Roumanie est d'avis que c'est la manière la plus naturelle et en même temps la meilleure pour sortir de l'embarras; il la trouve même ingénieuse parce qu'elle donnera à chaque Etat l'occasion de bien se rendre compte, par des discussions raisonnables des préjugés qui existent encore.

Il est évident qu'il y aura des inconvénients; il faudre des efforts énormes pour éviter toutes les difficultes appréhendées par M. Lainé, mais en face de la plus grande difficulté, c'est-à-dire la codification du droit international privé, il faut être fort. C'est une grande œuvre qui sera plus que passagère; les personnes changeront mais l'idée restera. Cette Conférence sera instituée peut-être comme Conférence permanente de codification, les législations auront à tenir compte de ses décisions et l'œuvre

sera continuée. M. Missir est convaincu que les essais aboutiront et qu'on obtiendra le résultat désiré. La Conférence fera une bonne œuvre en acceptant le texte tel qu'il se trouve dans le projet.

M. Roguin dit que la Délégation Suisse est disposée à adopter l'article du projet; mais elle désire avoir des renseignements sur trois points.

En premier lieu, y aura-t-il nécessairement une nouvelle loi rendue dans les Etats constitutionnels à l'effet de déterminer les dispositions impératives ou prohibitives visés?

En deuxième lieu, quand la communication officielle de ces dispositions aura-t-elle lieu? Avant ou après la signature de la Convention?

En troisième lieu, est-ce que, après avoir fait une première communication, ou après avoir rendu une première loi, un Etat sera libre de faire une nouvelle communication ou d'élaborer une nouvelle loi?

Le Président constate qu'une loi spéciale n'est pas requise, mais qu'en tout cas dans les pays constitutionels le pouvoir législatif devra s'expliquer d'un manière ou d'une autre. Quant à la seconde et à la troisième des questions posées par M. Roguin, le Président dit que les communications pourront être faites à tout moment, tant avant qu'après la signature de la Convention, fût-ce même plusieurs annéses après. La faculté existe nécessairement de faire plusieurs communications consécutives: la jurisprudence pourra fixer l'attention sur une disposition, à laquelle on n'avait pas pensé, ou bien la loi désignée pourra être modifiée. Le Président croit que les adversaires de la proposition exagèrent les difficultés. La porte ne sera jamais fermée. Des questions et des procès de cette nature au sujet d'une succession n'auront pas lieu tous les jours; le législateur pourra indiquer ces dispositions au fur et à mesure qu'elles se présentent.

M. van Cleemputte, Rapporteur, est convaincu qu'il sera bien difficile pour les Etats de désigner par des textes positifs quelles sont leurs lois impératives ou prohibitives visées par l'alinéa 1er. Cette indication ne pourra se faire ni par un arrêté ni par une circulaire; pour les tribunaux il faut une loi. Or, que feront les parlements? Il n'y a que deux voies. Ou bien la loi portant approbation du traité contiendra aussi la liste prescrite par la clause finale de l'alinéa 1er, ou bien cette loi portera que l'approbation parlementaire du traité n'aura pas d'effet avant qu'une loi ultérieure ait énuméré les dispositions impératives ou prohibitives qu'on veut voir prévaloir. Si l'on ne fait ni l'un ni l'autre, ce sera comme s'il n'y avait pas de lois ou d'intérêts sociaux auxquels les lois successorales étrangères ne pussent faire échec, comme s'il n'y avait pas de lois prohibitives à déclarer applicables aux successions et aux testaments des étrangers.

M. Missir croit que la méthode la plus pratique sera comme suit. Le Gouvernement Néerlandais, qui a pris l'initiative des Conférences, se chargerait d'inviter les autres Gouvernements à présenter le catalogue de leurs lois réputées d'ordre public; tous ces catalogues seraient communiqués sous la forme d'annexes à la présente Convention et les parlements devraient

par une seule loi tant approuver la Convention qu'arrêter la liste des dispositions impératives ou prohibitives.

Le Président fait ressortir qu'il résulte de l'alinéa 3 que chaque Etat reste libre de choisir le moment ou les moments auxquels il veut indiquer les lois visées par l'alinéa 1er. Seulement, c'est dans son propre intérêt de les indiquer avant la mise en vigueur de la Convention, car, tant qu'il ne les aura pas indiquées, l'application des articles 1 à 7 de la Convention ne sera restreinte d'aucune manière. Même après la signature du traité les Etats seront en tout temps libres de modifier leur liste, sous la seule condition de communiquer ces modifications conformément à l'alinéa 3. Comme l'a dit si justement M. Missir, l'article est une transition entre le droit existant, dans lequel les lois territoriales ont une prédominance illimitée, et le droit futur où l'ordre public national peut-être ne prévaudra plus en matière de droit international privé.

M. Lainé dit que pour lui c'est chose évidente que l'indication expresse exigée par l'article 8 regarde uniquement la matière visée par l'article 1. Par conséquent, si la liste française ne contient pas la réserve de l'article 3 du Code Civil, l'article 1 du traité renversera cet article par rapport aux successions étrangères. Les deux questions de l'article 1er et de l'article 8 sont étroitement liées.

M. de Martens prie M. Lainé de s'expliquer davantage. Supposons que la France adopte cette Convention; sera-t-elle alors obligée de modifier l'article 3 du Code Civil ou pourra-t-il rester sans modification?

M. Lainé est d'avis que l'article 3 du Code Civil ne devra pas être modifié; il continuera à former la règle générale, tandis que la Convention sur les successions ne constituera qu'une règle particulière.

A l'alinéa 2, le Président fait observer que l'alinéa sert à obvier aux législations du Danemark et de la Norvège. La réserve accorde la plus grande liberté possible, puisqu'il s'agit d'un grand intérêt public et social; mais, aux termes de l'alinéa 3, les deux pays devront préciser l'usage qu'ils comptent faire de cette faculté.

A propos de l'alinéa 3, le Président dit que, pour éviter tout malentendu, on pourrait peut-être ajouter une clause portant que les communications pourront se faire au fur et à mesure que le besoin se fera sentir. Mais comme c'est dans l'intérêt de l'Etat même de ne pas retarder ces communications, la clause ne lui paraît pas nécessaire.

Avant de mettre aux voix l'article 8, le Président désire faire ressortir encore une fois que l'énumération des dispositions d'ordre public ou social dans le texte même de l'article 8 serait irréalisable. Si l'on regarde les objections soulevées contre l'alinéa 1er de ce point de vue, beaucoup de ces objections tomberont.

Le principe de l'alinéa 1er, prescrivant une indication expresse des dispositions que les Etats veulent voir respectées, est mis aux voix.

M. Töry prie le Président de vouloir bien, avant de procéder au vote, lui donner l'occasion de constater qu'il sera réservé pour chaque

législation intérieure, aussi après la signature et pendant la durée de la Convention, de voter des lois rentrant sous l'alinéa premier de l'article 8.

Le Président dit qu'il en est bien entendu ainsi.

Le principe de l'alinéa 1er est adopté par dix voix contre quatre et une abstention.

Ont voté pour: l'Allemagne, l'Autriche, la Hongrie, l'Espagne, l'Italie, les Pays-Bas, le Portugal, la Roumanie, la Suède et la Suisse.

Ont voté contre: la Belgique, le Danemark, la France et la Norvège.

S'est abstenue: la Russie.

Ensuite l'amendement de M. van Cleemputte tendant à insérer après le mot: „prohibitives" les mots suivants: „consacrant ou garantissant un droit ou un intérêt social," est adopté en principe sans appel nominal et renvoyé au Comité de Rédaction.

Les alinéas 2 et 3 et l'article 8 entier sont adoptés sans appel nominal.

On procède à l'examen de l'article 9:

„Il ne sera fait aucun prélèvement ni admis aucune inégalité au profit des nationaux des Etats contractants à raison de la seule différence de nationalité des successibles, des légataires ou des donataires appartenant à ces Etats."

M. van Cleemputte, Rapporteur, fait observer que cet article est quelque peu une improvisation. Les mots „à raison de la seule différence de nationalité" etc. doivent être maintenus, parce que c'est le cas que visent les lois française de 1819, belge de 1865 et néerlandaise de 1869. Mais peut-être serait-il utile de modifier le texte. Il est à remarquer aussi que les prélèvements ne regardent que les héritiers, tandis que les inégalités se rapportent même aux légataires et aux donataires; toutefois, cette question pourrait être laissée au Comité de Rédaction.

M. Lainé dit que, s'il a bien compris les promoteurs de l'article, il s'agirait de supprimer radicalement les trois lois citées par M. le Rapporteur. Cependant, le texte proposé actuellement n'y suffira pas. La loi française du 14 juillet 1819 embrasse, selon la jurisprudence, deux cas bien distincts: premièrement, le cas où le prélèvement a lieu parce que la loi étrangère traite les héritiers français d'une manière inégale à raison de leur nationalité seule; ensuite, le cas où le prélèvement a lieu parce que les héritiers français n'ont pas d'après la loi étrangère tous les droits dont ils jouiraient d'après la loi française. La loi de 1819 prévoit tous les cas où les héritiers français ont moins de droits à l'étranger qu'ils n'en auraient chez eux „à quelque titre que ce soit." Par conséquent, la différence de nationalité contribue à justifier le prélèvement d'après la loi française, mais elle n'en est pas la seule cause. Donc, si le texte de la Commission était adopté, les juges des trois pays pourraient estimer que le traité n'a voulu abroger que le premier cas susdit. Pour ces raisons, M. Lainé propose de supprimer le mot „seule".

M. Roguin fait ressortir la grande importance du résultat qu'aura l'article 9. Il y a une question de fond et une question de forme. Sur

la question de fond tous sont d'accord; on veut abroger les trois lois. M. Roguin donne expression à la gratitude qui anime les Délégués de Suisse envers les représentants de France, de Belgique et des Pays-Bas pour le libéralisme avec lequel ils ont reçu la proposition suisse. En ce qui touche la question de forme, M. Roguin se rallie entièrement à la proposition de M. le Délégué de France.

Le Président fait observer que la disposition néerlandaise n'avait en vue que des lois comme l'ancienne loi anglaise qui défendait qu'un héritier étranger eût la propriété de biens immeubles situés en Angleterre.

M. van Cleemputte est d'avis que l'observation de M. Lainé est fondée. Il demande s'il ne vaudrait pas mieux de supprimer toute la fin de l'article, qui finirait donc par le mot „contractants“.

M. Lainé aimerait mieux qu'on ne supprimât que le mot „seule“: sinon, le texte serait très obscur. Il ajoute que ce n'est pas le libéralisme des Délégués qui mérite les louanges de M. Roguin. Elles devront être adressées à leurs Gouvernements, s'ils consentent à la suppression des lois dont il s'agit.

Le Président propose de renvoyer la question de forme au Comité de Rédaction; quant au fond, il n'existe pas de divergence d'opinions. On veut abroger le prélèvement accordé à cause d'une inégalité basée sur une seule différence de nationalité. En sera-t-il de même pour les cas où l'inégalité est causée par une différence entre la loi étrangère et celle des héritiers, par rapport aux degrés de parenté des successibles ou sur tout autre point? Si la Conférence veut supprimer le premier cas, elle devra à fortiori supprimer le second. Si un Etat n'admet pas que la loi étrangère porte atteinte aux droits successoraux de ses ressortissants, il ne pourra aucunement imposer, par voie indirecte, les dispositions de sa propre loi à l'Etat étranger. Le Président croit donc pouvoir constater que la Conférence désire l'abrogation des trois lois susnommées dans toute l'étendue de leur application selon la jurisprudence.

M. Töry déclare qu'il s'abstiendra de voter.

L'article 9 est ensuite adopté, sauf rédaction ultérieure.

L'article 10 est également adopté sans appel nominal en ces termes:

Les autorités de l'Etat sur le territoire duquel la succession s'est ouverte prendront les mesures nécessaires pour assurer la conservation des biens héréditaires, à moins qu'il n'y soit pourvu, en vertu de conventions spéciales, par les agents diplomatiques ou consulaires de la nation à laquelle le défunt appartenait.

Puis on procède à l'examen des „dispositions générales“, et en premier lieu à l'article 11 qui porte:

Les Etats contractants sont d'accord que chacun d'eux conserve sa liberté de disposer en ce qui concerne l'acceptation sous bénéfice d'inventaire, la renonciation et la responsabilité des héritiers à l'égard des créanciers.

Le Président préférerait le mot „statuer“ à celui de „disposer“.

M. Töry remarque que dans cet article il s'agit bien d'héritages d'étrangers et non pas aussi d'héritages laissées sur le territoire d'un Etat par ses propres ressortissants. Pour ces derniers les dispositions de l'article 11 vont sans dire et sont superflues. Le Délégué de Hongrie propose donc de faire expressément ressortir du texte, que les dispositions de l'article 11 ne se rapportent qu'aux héritages des étrangers.

M. Lainé dit que la disposition lui paraît un peu singulière. Selon les termes de l'article, on dispose pour dire qu'on ne dispose pas.

Le Président avait cru que M. Lainé serait le premier pour applaudir à l'article qui n'est inséré que pour donner satisfaction à une observation de M. le Délégué de France. Sans cette réserve, la renonciation etc. serait régie; aux termes de l'article 1er, par la loi nationale du défunt.

M. de Martens, Président de la Commission des successions, tient à constater que la décision de la Commission de laisser pleine liberté d'action aux différents Etats en ce qui concerne les matières indiquées par l'article 11, a été prise à l'unanimité des voix.

M. van Cleemputte, Rapporteur, donnant suite à la première observation de M. le Président, propose de substituer aux mots „disposer en ce qui“ le terme: „régler ce qui“. Au fond l'article ne vise que la question de la responsabilité ultra vires au point de vue du règlement. Il ne s'agit que de mesures réglant l'application du principe. Les diverses législations ou les traités ont déjà pourvu à la plupart des autres points, de manière à faire dominer la loi du lieu ou la succession s'est ouverte.

M. Beichmann appelle l'attention de la Conférence sur une question soulevée par M. Lainé dans la précédente séance. Il s'agit de savoir si le bénéfice de séparation serait régi par la règle posée dans l'article 1er, ou si la restriction, que porte la disposition de l'article 11, doit aussi s'étendre à cette institution. En supposant que c'est la dernière solution qui doit être acceptée, le Délégué de Norvège propose d'insérer les mots „les droits des créanciers“.

Le Président propose de renvoyer ce point ainsi que la question soulevée par M. Töry au Comité de Rédaction.

La Conférence se rallie à cette proposition.

L'article est adopté sans appel nominal.

On procède à l'examen de l'article 12 qui est conçu dans ces termes:

La présente Convention ne s'applique que dans le cas où le défunt, au moment de son décès, appartenait à un des Etats contractants.

M. Roguin demande s'il est bien entendu que la Convention s'appliquera toujours dans le cas signalé par cet article. Le cas peut se présenter qu'un ressortissant de l'un des Etats contractants meurt sur le territoire d'un Etat non contractant ou bien qu'il soit domicilié dans ce dernier Etat. Il importe de statuer pour ces cas d'une façon qui ne laisse aucun doute.

M. Dungs dit que l'article 12 répond à la proposition allemande. L'Allemagne désire que l'article soit interprété dans le sens le plus large

et soit appliqué alors même que le défunt n'aurait pas été domicilié dans un des pays contractants. D'autre part il lui semble que la Convention ne devrait pas être appliquable par exemple à la succession d'un Anglais domicilié et décédé à Berlin, même si les héritiers étaient Autrichiens. La qualité de ressortissant doit être la condition sine qua non, mais aussi la seule condition pour l'application de la Convention.

Le Président croit qu'il suffira d'insérer la déclaration de M. le Délégué d'Allemagne au procès-verbal de la séance.

M. van Cleemputte, Rapporteur, constate, avec M. le Délégué d'Allemagne, que la Convention s'appliquera même si la succession s'ouvre dans un Etat non contractant; cela peut avoir son intérêt si un immeuble appartenant à une telle succession était situé dans l'un des Etats contractants.

L'article est adopté sans appel nominal.

Le Président remarque que des dispositions finales toutes conformes seront annexées à tous les Projets de convention arrêtés par la Conférence. Il s'agit de savoir si l'on veut les discuter dès maintenant, ou bien si l'on préfère les renvoyer au Comité de Rédaction pour qu'il les harmonise et les mette en conformité?

M. de Martens appuie l'idée d'un renvoi au Comité de Rédaction.

Cette proposition est adoptée.

La discussion est ouverte sur le Vœu exprimé par M. Missir dans les termes suivants:

Les tribunaux du dernier domicile du défunt où la succession est ouverte restent compétents à prendre les mesures conservatoires concernant les biens successoraux et à liquider la succession.

Ils restent également compétents à juger, jusqu'au partage effectué, toutes les actions et contestations qui peuvent avoir lieu les ayants-droit aux bien successoraux.

M. de Martens, Président de la Commission, constate que les membres de la Commission étaient d'accord sur la grande importance à attacher à une organisation des compétences en matière successorale. Quand la Commission a voté ce vœu elle s'est parfaitement rendu compte du fait que la Conférence n'est nullement compétente pour prendre une décision à ce sujet. Le désir de la Commission n'est autre que de voir la Conférence s'associer au vœu, afin que les Gouvernements puissent examiner la matière.

M. Missir croit qu'en principe la nécessité de la réforme prévue par le vœu n'est plus discutable. Les dispositions de droit matériel ne sont pas achevées tant que la compétence n'est pas réglée, la juridiction étant la sanction réelle du droit. Il n'existe de divergence de vues que sur la question, quelle doit être cette compétence. Le Délégué de Roumanie invoque, pour appuyer le choix du lieu du dernier domicile, les considérations suivantes. Premièrement: le domicile d'un défunt peut avoir été dans un autre pays que celui auquel il appartenait comme national; dans

ce cas nombre de difficultés seraient soulevées si l'on voulait transporter toutes les relations, soit entre les successeurs, soit entre ceux-ci et des tiers, à la connaissance des tribunaux nationaux. En second lieu: si l'on veut réclamer des mesures conservatoires, s'il s'agit de savoir en quelle condition se trouve un bien ou s'il est partageable en nature, etc., dans tous ces cas la compétence des tribunaux nationaux nécessiterait l'intervention de commissions rogatoires, ce qui compliquerait énormément la liquidation. En dernier lieu: d'une part l'article 8 sauvegarde les lois territoriales; comment, si dans le pays national les tribunaux avaient décidé en dernière instance, et ensuite les tribunaux du lieu du domicile croyaient nécessaire de soulever l'un des obstacles de nature territoriale prévus par cet article 8? Toutes ces complications disparaissent dès qu'on désigne comme for compétent les tribunaux du lieu où s'ouvre la succession.

M. de Paepe fait observer que, pour tout ce qui précède le partage, la compétence du juge du dernier domicile est déjà reconnue par la jurisprudence belge. Pendant un certain temps tous les documents doivent s'y réunir, toutes les actions doivent y être présentées. Tant la loi de 1876 que le traité franco-belge de 1899 consacrent cette compétence. Le traité de 1899 n'édicte pas l'unité de la succession, mais elle édicte bien l'unité de la compétence, tant pour les actions entre les héritiers que pour celles entre les héritiers et les créanciers. Il n'y a sur ce point qu'une seule différence entre le traité et la loi, savoir que la loi limite la compétence à un certain nombre d'années.

La jurisprudence belge rentre donc tout à fait dans les idées qui ont inspiré M. Missir. Quant à l'alinéa 1er du vœu, M. de Paepe fait encore observer, qu'en Belgique le juge du dernier domicile n'est pas exclusivement compétent pour les mesures conservatoires, mais de même le juge de chaque lieu où la nécessité de telles mesures surgit, puisqu'il peut y avoir urgence. Par conséquent, l'alinéa 1er devra encore être complété; quant au second alinéa, la Belgique l'admet déjà.

M. Meili dit qu'il a écouté M. Missir avec grand plaisir, mais il aurait préféré voir la compétence résolue par une disposition de la Convention. La Délégation Suisse a exprimé dans toutes les Conférences le désir de voir régler la question de la compétence, et elle est aussi maintenant chargée par le Gouvernement Fédéral d'insister sur ce point, et de demander pour quelles raisons on n'a pas donné satisfaction à sa manière de voir. Le Gouvernement Suisse est d'avis qu'une convention de droit international privé n'a guère de valeur s'il n'y a pas de dispositions précises par rapport à la compétence des tribunaux. Cette convention repose sur l'expérience et sur des considérations pratiques. M. Meili a toujours soutenu la même thèse, en s'appuyant sur des considérations tirées de la doctrine. Le conflit de droit international privé, collisio statutorum, se présente toujours sous deux aspects différents. En premier lieu se pose la question quelle loi est applicable et en second lieu quelle juridiction est compétente.. Il est dès lors insuffisant de statuer seulement sur le droit applicable: ce n'est qu'un côté du conflit. La réponse à cette question est certainement très

importante, mais pour faire disparaître la collision il est absolument nécessaire de régler en même temps la compétence des tribunaux. Ce n'est que sous cette condition-là que le conflit trouve sa solution. On a tort de dire qu'il y a lieu de distinguer entre le droit matériel et le droit formel, comme on a l'habitude de le faire dans le droit interne. Dans le domaine du droit international il n'y a pas moyen de séparer les deux choses: elles sont trop intimement liées. Ce dont il s'agit est de créer autant que possible la compétence des juges qui ont à appliquer leur propre loi. La Première Commission était à ce point convaincue de l'importance de cette question, qu'elle a tenu à indiquer, au titre même de son projet sur le divorce et la séparation de corps, qu'il ne s'agissait pas seulement d'un conflit de lois nationales, mais bien aussi d'un conflit de juridiction. Les mêmes motifs ont amené le législateur suisse à se prononcer sur la compétence des tribunaux. La loi fédérale de 1891 a réglé tant la loi applicable que la compétence.

M. Meili n'ignore nullement les arguments sur lesquels l'opinion contraire s'appuie généralement: on renvoie à un règlement systématique et complet de la compétence des tribunaux. Mais n'est une perspective assez lointaine. Mieux vaut régler la compétence partielle en tant qu'elle se rattache aux différentes matières spéciales. Cette manière de procéder est plus conforme au progrès graduel et au développement naturel des choses, le règlement complet sera le couronnement de l'œuvre.

Comme le projet de convention sur les successions, les testaments et les donations à cause de mort ne contient pas de dispositions relatives à la compétence des tribunaux, M. Meili, au nom du Conseil Fédéral, se voit obligé à faire toutes ses réserves.

Quant au vœu proposé par M. Missir et accepté par la Commission, M. Meili croit qu'il suffira de constater qu'un vœu analogue a déjà été adopté à l'unanimité par la Deuxième Conférence (voir Actes II, page 124). Où est donc la progrès qu'on réalise quand on se contente de nouveau d'un simple vœu à cet égard?

Le Président est d'avis que la matière de la compétence successorale n'est pas encore assez mûre pour former un article de la Convention, comme le veut M. Meili. Rien n'empêche les Gouvernements que le désireraient, de négocier une Convention supplémentaire à ce sujet.

M. Roguin croit devoir insister sur l'extrême importance de régler la compétence judiciaire en matière de droit international privé. Quelques Délégués veulent qu'on fasse plus tard une convention générale réglant cette compétence pour toutes les matières; d'autres, et M. Roguin se range parmi eux, sont convaincus qu'une convention générale est une utopie, mais qu'on devra faire des prévisions de cette nature dans chaque traité spécial. L'histoire de la codification du droit international privé est, sous ce rapport, fort instructive. D'abord on a pensé à faire un grand traité compréhensif: puis on en a vu l'impossibilité, et l'on a spécialisé la matière: mariage tutelle, succession etc.; puis on a dû subdiviser encore la matière du mariage. Si nous voulons aborder plus tard un traité général

sur la compétence, ces obstacles seront certainement encore plus grands. M. Roguin est d'avis que la vraie méthode à suivre c'est de faire entrer dans les conventions spéciales autant de règles sur la compétence que possible. Tout en réservant son opinion sur la teneur du vœu de M. Missir, avec lequel il n'est pas en tous points d'accord, il appelle l'attention de la Conférence sur l'extrême intérêt de la matière.

Le Président répond à M. Roguin que tous les membres de la Conférence sont convaincus de cet intérêt. La seule chose qui les retient de transformer le vœu en un article de Convention c'est qu'ils ne peuvent croire la question déjà mûre pour être résolue de la sorte. Si la Suisse avait fait d'avance une proposition à cet effet, on aurait peut-être pu mettre la compétence en matière successorale à l'ordre du jour de la Conférence, mais maintenant cela se pourrait d'autant moins que M. Roguin déclare ne pas se rallier à la teneur du vœu proposé par M. Missir. Sous ces conditions il ne reste rien que d'insérer un vœu dans le Protocole Final de la Conférence.

M. Roguin préférerait que dans ces conditions, le vœu, sans entrer dans les détails, n'exprimât que l'avis de la Conférence, qu'il est hautement désirable de règler la compétence en matière successorale.

M. de Martens émet comme son avis personnel qu'il serait mieux de laisser au vœu la forme que la Commission lui a donnée; l'opinion de M. Roguin à cet égard figurera elle-aussi dans le procès-verbal.

M. Dungs prie d'insérer dans le procès-verbal que l'Allemagne s'abstient de voter sur ce vœu.

M. de Martens ne comprend pas le motif d'une pareille abstention. Le vœu n'oblige, n'engage les votants à rien, alors pourquoi s'abstenir de le voter?

M. Dungs craint qu'on ne puisse interpréter ce vote comme si l'Allemagne s'engageait dans une certaine mesure.

M. le comte de Selir appuie la manière de voir de M. de Martens. Un vœu n'exprime qu'une manière de voir des Délégués: il n'engage à rien leurs Etats.

Le vœu de M. Missir est adopté sans appel nominal, sauf rédaction ultérieure par le Comité de Rédaction.

La prochaine séance, qui s'occupera en premier lieu de la seconde lecture des projets sur la tutelle et sur les successions ainsi que de l'avant-projet sur la faillite, est fixée au lendemain à 2 heures.

La séance est levée à midi.

Le Président:
Asser.

Le Premier Secrétaire:
J. J. Rochussen.

Les Secrétaires:

Beelaerts de Blokland. *T. R. J. E. Stoop.*
C. van Vollenhoven. *H. van Karnebeek.*

Procès-verbal n° 6. (Séance du 13 juin 1900.)

La séance est ouverte à 2 heures.

Sont présents:

MM. Asser, Président, Dungs, Kriege, Schumacher, Töry, de Paepe, van Cleemputte, van den Bulcke, Matzen, Oliver y Esteller, Lainé, le baron Galvagna, Pierantoni, Rahusen, Heemskerk, Ort, le comte de Selir, Missir, de Martens, de Hammerskjöld, Beichmann, Meili et Roguin.

Le Président annonce que Leurs Majestés la Reine et la Reine-Mère ont daigné accéder à la demande de la Conférence et accorderont une audience à MM. les Délégués au Palais de Soestdijk mardi le 19 juin prochain.

Il propose de commencer par examiner le

Projet d'une Convention relative à la tutelle,

tel que le texte en est proposé par le Comité de Rédaction.*)

L'article 1 est adopté sans discussion.

Par rapport à l'article 2, le Président fait observer que le Comité de Rédaction a cru devoir restituer le texte dans la forme qui, à une faible majorité, a été rejetée dans la séance du 6 juin. (Voir Procès-verbal n° 3, page 93). Pour favoriser l'assentiment des Etats qui tiennent à se réserver le droit d'accorder l'intervention tutélaire des agents diplomatiques ou consulaires, il vaut mieux rétablir le texte original, car les Etats qui n'y tiennent pas pourront probablement s'y rallier. Le texte laisse une grande liberté et l'addition proposée ne regarde pas un point fondamental de la Convention. Le système proposé est un peu moins radical, mais pourra rendre le projet plus acceptable.

En réponse à une question posée par M. Rahusen, le Président prie la Conférence de laisser au Comité de Rédaction le soin d'établir la ponctuation.

La Conférence y consent.

Ensuite, le Président demande s'il ne serait pas désirable de substituer aux mots: „au cas“ les mots: „pour le cas“.

M. Lainé croit qu'on rendrait mieux encore la pensée en disant: „en vue du cas“.

M. Kriege propose de remplacer la clause: „si la loi du lieu ne s'y oppose pas“ par les mots: „si l'Etat ne s'y oppose pas“, vu que quelques législations ne contiennent pas de disposition à cet égard.

Le Président propose de rédiger la clause finale de l'article dans les mêmes termes qui seront choisis pour le mariage.

Au sujet de ce qu'a proposé M. Kriege, M. le comte de Selir demande, s'il ne sera pas trop vague de dire simplement „l'Etat“?

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*) Voir l'annexe 1 à ce Procès-verbal.

Pour obvier à l'observation de M. le comte de Selir, le Président propose, conformément à une idée émise par M. Roguin, de rédiger la fin de l'article en ces termes: „et si l'Etat de la résidence habituelle du mineur ne s'y oppose pas".

M. Rahusen demande, si le mot „Etat" comprend aussi le Gouvernement?

Le Président répond que c'est là précisément le but de la rédaction de M. Kriege.

L'article 2, modifié en ce sens, est adopté.

L'article 3 est adopté.

A l'article 4, le Président dit que le Comité de Rédaction s'est donné beaucoup de peine pour trouver une rédaction pouvant satisfaire aux différents désirs qui ont été émis lors de la première lecture et au sein du Comité.

M. Schumacher fait observer que le terme „prend fin" a un sens tout autre dans l'alinéa 3 de cet article que dans l'article 5; c'est pourquoi il propose de remplacer ici les mots: „quand cette tutelle prend fin" par les mots: „quand l'exercice de la tutelle cesse".

M. Roguin dit qu'il préfère le texte du Comité de Rédaction. L'alinéa 3 ne dit pas que la tutelle prend fin, mais que l'ancienne tutelle prend fin; la rédaction de M. Schumacher ferait croire qu'il reste encore quelque chose de cette ancienne tutelle, tandis qu'elle prend fin tout à fait.

M. Ort propose la rédaction: „quand cette tutelle cesse".

M. Lainé est d'avis qu'il vaudrait encore mieux de dire: „à quel moment cette tutelle cesse".

M. Heemskerk voit encore à la lettre une contradiction entre l'alinéa 3, tel qu'il est proposé maintenant, et l'article 5, vu que la tutelle continue et que seulement son exercice d'après les règles de la loi première fait place au régime de la loi nationale. Mais il faudra expliquer l'article dans le sens indiqué par M. Roguin.

La rédaction proposée par M. Ort, telle que l'a amendée M. Lainé, est adoptée.

M. Pierantoni dit que dans l'état actuel des législations, il ne connaît pas de lois qui pourraient créer le conflit prévu par l'alinéa 3. Il lui semble que la Conférence va obliger les Etats contractants à compléter leurs lois sur la tutelle. Il reste partisan de la première rédaction. Ne voulant pas proposer un amendement, il prie qu'on prenne acte, dans le procès-verbal, de sa réserve.

Le Président fait ressortir que la disposition aura son intérêt, même s'il n'existe pas à présent des lois d'où peut surgir le conflit prévu par l'alinéa 3. Sans cette disposition il pourrait y avoir des tribunaux qui méconnaîtraient le caractère de mandat propre à la tutelle, exposé si clairement par M. Missir dans la troisième séance, et qui par cette erreur appliqueraient à la cessation de l'ancienne tutelle quelque autre principe.

M. Pierantoni dit qu'il ne lui paraît pas clair quel cas la disposition vise. Il préférerait la première rédaction.

Le Président répond que la Convention doit régler la transition de l'ancienne tutelle à la nouvelle. Or, si l'on ne se référait pas à l'une des deux lois qui sont en question, on aurait besoin de bien plus de prescriptions spéciales pour régler les droits des tiers, etc.

M. Pierantoni fait observer encore que le principe du traité est de favoriser le régime de la loi nationale du mineur. L'alinéa 3, en se référant simplement à la loi de l'Etat de la résidence habituelle du mineur, ne se conforme pas à ce principe.

L'article 4 est adopté, de même que les articles 5, 6, 7 et 8.

On aborde la proposition des Délégués d'Allemagne, dont l'examen avait été différé à la fin de la troisième séance plénière et qui tend à ajouter un dernier article conçu en ces termes:

La présente Convention ne s'applique qu'à la tutelle des mineurs ressortissants d'un des Etats contractants qui ont leur résidence habituelle sur le territoire d'un de ces Etats.

M. Schumacher fait la proposition de supprimer le mot „habituelle" après „résidence". Il croit que, en vue des articles 7 et 8 de l'avant-projet, il ne faut pas exclure le cas de résidence temporaire.

M. Roguin pose le cas d'un mineur allemand, ayant sa résidence habituelle en Angleterre, mais possédant des biens sur le territoire d'un des Etats contractants, par exemple en Belgique. Dans une pareille hypothèse, il ne voit pas de motif pour écarter l'application du traité en tant qu'elle est possible. Il rappelle à la Conférence ce qu'elle a décidé hier par rapport à l'application du traité sur les successions. Veut-on résoudre la question ici de la même façon que là, ce qui à son avis est bien recommandable, alors il faudra supprimer les mots: „qui ont leur résidence habituelle sur le territoire d'un de ces Etats".

M. Lainé croit que la proposition de M. Roguin est en contradiction avec le texte de la plupart des articles de la Convention.

Le Président ne voit pas qu'il y ait une contradiction. Les articles précédents qui contiennent comme élément constitutif la résidence habituelle restent intacts. L'article final modifié selon les vues de M. Roguin ne changerait rien à ces articles-là, il ne ferait qu'exclure l'application du traité aux mineurs non ressortissants d'un des Etats contractants.

M. Roguin voudrait voir appliquer la Convention autant que possible aux rapports juridiques d'un mineur ressortissant d'un des Etats contractants, mais n'ayant sa résidence habituelle dans aucun d'eux.

M. Heemskerk appuie l'amendement de M. Roguin. Si la Conférence acceptait l'amendement de M. le Délégué d'Autriche, la Convention ne serait pas encore applicable au mineur ressortissant d'un des Etats contractants qui a sa résidence temporaire en Angleterre, bien qu'il ait sa résidence habituelle en Autriche. Une telle prescription ne serait pas en

conformité avec l'esprit de la Convention. On peut, du reste, sans aucun danger accepter l'amendement de M. Roguin, puisque les autres articles où il est question des autorités de la résidence habituelle ne s'appliquent qu'aux Etats contractants.

M. Kriege demande le maintien de la rédaction proposée par la Délégation d'Allemagne. La suppression de la phrase „qui ont leur résidence habituelle sur le territoire d'un de ces Etats" aurait pour résultat que les Etats contractants seraient obligés d'appliquer les dispositions de la Convention aux mineurs qui ne résideraient pas dans un Etat contractant. Si donc l'un de ces Etats, par exemple l'Angleterre ou les Etats Unis d'Amérique, pratiquent le principe du domicile, ils n'appliqueront pas la loi nationale du mineur mais leur propre loi, et par suite ils rendront excessivement difficile sinon impossible l'application de la Convention. Par exemple, une tutelle établie en Angleterre à l'égard d'un mineur allemand ne pourrait être reconnue dans un des Etats contractants que si les conditions de l'article 3 sont remplies, de sorte que le tuteur serait régulièrement hors d'état d'administrer la fortune située dans un Etat contractant.

Le Président fait observer à M. Kriege que l'Angleterre ne pourrait être obligée à s'abstenir de mesures concernant les biens indiqués. De plus, la Convention ne contient aucune disposition qui pourrait s'appliquer à un pareil cas, pas même l'article 7. L'article final comme le veut M. Roguin ne crée pas une application, qui sans cela ferait défaut, aux mineurs se trouvant hors des Etats contractants; il ne fait qu'exclure l'application des articles 1 jusqu'à 8 aux mineurs non ressortissants.

M. de Martens est d'avis que, pour toute la teneur de ce traité, il faut bien s'éclairer sur le but qu'on a en vue par son élaboration. Suivant lui, il n'y a qu'un but unique, celui de sauvegarder les intérêts du mineur. Par conséquent, il croit que les Etats contractants sont moralement tenus de sauvegarder ces intérêts dans tous les cas où cela dépend d'eux; au cas même où le mineur réside ailleurs, ses rapports juridiques, sur lesquels leur législation peut influencer, doivent être protégés conformément aux principes de la Convention. C'est pourquoi il votera l'amendement proposé par M. Roguin.

M. Roguin tient à s'expliquer sur la portée de sa proposition. Dans l'hypothèse susdite du mineur allemand résident en Angleterre et ayant des biens en Belgique, la seule question est de savoir si les autorités belges seront obligées de donner suite à la requête faite par l'Allemagne de protéger tel intérêt belge du mineur. M. Roguin se déclare partisan du système qui obligerait dans l'espèce la Belgique de se conformer autant que possible à la Convention.

L'amendement de M. Roguin, mis aux voix est adopté par treize voix contre une.

Ont voté pour: l'Autriche, la Hongrie, la Belgique, le Danemark, la France, l'Italie, le Pays-Bas, le Portugal, la Roumanie, la Russie, la Suède, la Norwège et la Suisse.

A voté contre: l'Allemagne.

Le Président constate que par suite de ce vote la proposition de M.M. les Délégués d'Allemagne doit être considérée comme adoptée à l'exception des mots: „qui ont leur résidence habituelle sur le territoire d'un de ces Etats," lesquels doivent être supprimés.

Sur la proposition du Président, la Conférence décide d'arrêter plus tard les dispositions finales que le Comité de Rédaction a rédigées d'une manière uniforme pour tous les projets de convention qui figureront dans le protocole final.

L'ensemble de l'avant-projet sur la tutelle avec les modifications y apportées au cours de la séance est adopté sans appel nominal.

Le Président tient à féliciter chaleureusement la Conférence de l'œuvre qu'elle vient de terminer, œuvre qu'il estime d'une très-grande utilité pratique. Il y ajoute ses remercîments sincères au Président et au Rapporteur de la Troisième Commission ainsi qu'aux membres de cette Commission.

On procède à l'examen des propositions de la 4ième Commission, concernant.

la Faillite.*)

Le Président expose en quelques mots que la Conférence se trouve en face de deux systèmes différents: celui de M. Pierantoni, Président de la Commission, qui — comme le démontre sa note personnelle jointe au rapport — a seulement pour but d'étendre les effets d'une déclaration en faillite dans un des Etats contractantes sur le territoire de tous les autres Etats contractants, et le système un peu plus radical des autres membres de la Commission, tendant à désigner aussi le tribunal exclusivement compétent pour déclarer la faillite.

M. le comte de Selir rappelle que la faillite ne figurait pas au Projet de Programme. Par conséquent, les Délégués n'ayant pas reçu d'instructions par rapport à cette matière de la part le leurs Gouvernements, la discussion aura un caractère purement personnel et ne pourra mener à un avant-projet de convention.

Le Président oppose à ce que vient d'observer M. le Délégué de Portugal, que la matière de la faillite a été traitée par les deux Conférences précédentes. La Conférence de 1894 se trouvait pour toutes les matières dans les mêmes conditions où se trouve la présente Conférence par rapport à la faillite, mais néanmoins elle a abouti à un projet concernant la procédure auquel tous les Etats ont voulu accorder force de traité. Si l'on veut tâcher de tomber d'accord dans cette session sur un avant-projet concernant la faillite, le résultat sera inséré dans les procès-verbaux et le Gouvernement des Pays-Bas pourra examiner s'il y a lieu de préparer un projet pour la 4ième Conférence.

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*) Voir l'annexe 2 à ce Procès-verbal.

M. de Martens se rallie à l'avis de M. le comte de Selir.

M. Dungs déclare ne pas être autorisé à voter sur cet avant-projet, et même ne pas pouvoir prendre part aux délibérations. Le Gouvernement Impérial ne s'étant pas occupé de la matière, ses Délégués devront forcément s'abstenir.

M. de Paepe s'étonne de la fin de non-recevoir que les Délégués de Portugal, de Russie et d'Allemagne ont cru devoir opposer à l'avant projet. Il n'ignore pas que les Délégués ne sont pas munis de mandats pour traiter cette matière; mais un avant-projet adopté par cette Conférence constituerait un grand progrès vers la réglementation internationale. De plus, dès que la Conférence, dans sa première séance plénière, a décidé de mettre la faillite à l'ordre du jour et que dans sa deuxième séance elle a chargé la Commission d'élaborer un avant-projet, elle ne peut plus lui dire que son œuvre n'est pas de nature à être prise en considération.

M. Roguin, Rapporteur, sans énoncer d'opinion à l'opportunité d'une discussion, déclare se mettre à la disposition de la Conférence.

Le Président appelle une seconde fois l'attention de la Conférence sur le motif qui a retenu le Gouvernement des Pays-Bas de faire entrer dans son Projet de Programme le droit de la faillite. Ce motif ne consistait qu'en l'obstacle soulevé par la Belgique, et ce n'a été qu'au début de la présente session qu'on a su que l'obstacle n'existait plus. Mais, comme maintenant l'obstacle qui s'opposait à continuer l'œuvre de 1894 est levé, pourquoi cette œuvre ne pourrait-elle pas servir de base aux délibérations de la Conférence?

M. Rahusen tient à déclarer qu'à son avis la réglementation internationale de la faillite est une mesure des plus nécessaires en matière de codification du droit international privé. L'état actuel du droit international de la faillite est un véritable scandale; on peut s'en convaincre tous les jours. Par défaut d'instructions, les Délégués ne pourront faire un projet de convention; mais l'œuvre préparatoire à laquelle ils peuvent se vouer dès à présent aura déjà comme telle une haute utilité pour les travaux futurs.

Après une discussion prolongée, où MM. Pierantoni, de Paepe, Roguin, Missir et le Président défendent l'idée d'un examen approfondi, tandis que M.M. Lainé, de Martens et le comte de Selir la combattent, on procède à l'examen de l'avant-projet.

M. de Paepe appelle l'attention sur la question capitale, si la Convention s'appliquera à la faillite des seuls commerçants ou bien encore à la liquidation organisée des biens d'un non commerçant. La majorité de la Commission était d'avis qu'il ne faut pas se borner à la faillite commerciale; lui seul a soutenu la restriction qui pour nombre de législations actuelles, notamment celles de la France, de la Belgique et de la Suisse, est de rigueur.

Le Président croit devoir faire observer que ce n'est pas là la question qui devra dominer les débats. Ce n'est pas la Convention qui aura à décider ce point; cela dépend entièrement de la législation interne

de chaque Etat. Dès qu'on consacre le principe de la reconnaissance des faillites étrangères, comme le veut l'article 1 du projet, on doit les reconnaître telles quelles. La faillite d'un non commerçant déclarée aux Pays-Bas ou en Allemagne devra, dans cette hypothèse, être reconnue de même en Erance ou en Belgique.

M. Roguin répond que ce que vient de dire M. le Président est précisément l'une des deux solutions possibles de la question posée par M. de Paepe, savoir la solution dans le sens de l'extension aux non commerçants. Si le traité s'en réfère aux lois respectives des différents Etats, il étend par là-même son application aux non commerçants mis en faillite dans les pas dont la législation connaît la faillite non commerciale.

Le Président se rallie à l'opinion émise par M. Roguin. Il avait d'abord compris M. de Paepe en ce sens, comme s'il voulait que le traité lui-même fît le choix. Il va de soi qu'une telle disposition aurait empiété sur le domaine des lois internes.

M. de Paepe défend la seconde solution du problème. A son avis, les pays qui ne connaissent pas la faillite des non commerçants sont dans une complète impossibilité de reconnaître une pareille faillite prononcée à l'étranger.

M. Pierantoni rappelle que la Commission de 1894 s'était entendue sur le principe de ne pas exiger la reconnaissance d'uue faillite étrangère non commerciale qu'en tant que les Etats y consentaient par voie de conventions spéciales. Quant à la question de l'unité plus ou moins absolue, la Commission de 1894 s'en est occupée, mais n'a pu la résoudre sans connaître toutes ses lois sur la faillite en vigueur dans les différents Etats. Les inconvénients dont a parlé M. Rahusen reviennent tous à ce que l'individu peut se soustraire à sa faillite; à ce que le régime territorial actuel des déclarations en faillite porte atteinte à la règle: bona debitoris obnoxia sunt creditori. La Commission de 1894, en se conformant au système proposé dès lors par M. Asser, a jugé qu'il s'agissait en tout premier lieu d'obvier à cette irrégularité; c'est pourquoi elle a réussi. Elle a proposé de rendre les déclarations de faillite prononcées quelque part dans les Etats contractants exécutoires sur toute l'étendue de leurs territoires, et d'ajouter à cette prescription quelques règles pour la procédure de l'exéquatur eu égard à l'extrême divergence des lois existantes en ce qui concerne l'exécution des jugements étrangers. Tout en appréciant la haute valeur de la Convention franco-belge de 1899 qui a décrété la compétence exclusive du tribunal du siège principal, M. Pierantoni est convaincu qu'un traité collectif ne peut aller plus loin que les propositions de 1894. De plus, la compétence exclusive du juge du siège principal fait naître plusieurs questions des plus épineuses. M. Pierantoni croit qu'un projet qui renverrait les créanciers roumains ou espagnols au juge du siège principal en Belgique ou en Norvège est impratiquable et compromettrait la possibilité d'une convention.

M. Rahusen estime que la principale importance du projet consiste en un seul article, l'article 4. A présent les créanciers peuvent saisir

librement les biens situés audelà des frontières. Mais les Etats ne se considérant plus comme ennemis, mais comme amis, ont le devoir moral de mettre fin à cet état de choses. L'adoption du seul article 4 marquerait déjà un progrès tout considérable.

Le Président croit que M. Rahusen n'attache pas assez d'importance à la clause contenue dans l'article 4 portant que sera reconnue la faillite déclaré „par l'autorité compétente aux termes de l'Article 1". En effet, la question de la compétence domine toute la matière. D'une part, M. Asser reconnaît la grande valeur du système de M. Pierantoni, en ce qu'il n'oblige pas la Convention à régler la compétence. En outre, il y a toujours des Etats qui ne veulent pas se départir des règles de leur législation nationale à cet égard; le projet de 1894 pourrait persuader à ceux-ci de ne pas soustraire à la convention visée. Mais d'autre part, les objections soulevées contre ce système dans le rapport de la 4ième Commission n'ont rien perdu de leur force. C'est pourquoi M. Asser soumet à l'attention de la Conférence une troisième solution, tendant à rendre l'unité de la faillite plus acceptable pour certains Etats tout en gardant cette unité intacte. M. Roguin a fort bien démontré dans son rapport que le système de la Commission de 1894 n'écarte pas l'existance simultanée de tribunaux compétents dans divers pays. Le Président croit qu'on pourrait dire dans la Convention que sera compétente pour déclarer la faillite l'autorité du domicile du débiteur, à moins que la législation de l'Etat de ce domicile ne déclare compétente l'autorité du principal établissement de ce débiteur. Cette formule a premièrement l'avantage de mieux tenir compte de la possibilité de la faillite d'un non commerçant, qui n'aura que rarement un „établissement principal"; et puis elle permet aux Etats qui ne peuvent consentir à la compétence exclusive du tribunal du siège principal, de conserver la compétence de leurs propres juges dans tous les cas où le débiteur est domicilié sur leur territoire.

M. Roguin n'a pas bien compris si la proposition de M. Asser est restreinte au cas que le domicile et l'établissement sont situés dans le même Etat; alors il n'y aurait pas de question de droit internatinal. Mais il faut prévoir le cas où le domicile de la famille et le centre des affaires seraient situés dans deux pays différents. La Commission, bien que sachant que la loi et la jurisprudence néerlandaises décident en faveur du domicile, s'est prononcée, à l'unanimité, pour la compétence du centre des affaires, à l'exclusion de la compétence du domicile, pour les motifs exposés dans son rapport. Après tout, la question de beaucoup la plus importante est celle de savoir si l'on veut introduire, oui ou non, le principe de l'unité stricte de la faillite. La Commission a examiné deux autres systèmes: le système de 1894, qui respectait toutes les compétences existantes d'après les lois internes et ne faisait qu'attribuer des effets universels à la faillite déclarée quelque part; est puis le système de l'Institut de Droit International, qui accordait une force temporaire à la mise en faillite d'une succursale, prononcée par le juge compétent du pays, tout en ordonnant que ce juge devrait se dessaisir, retracter son jugement, au profit du juge de l'établisse-

ment principal, quand ce dernier prononçait lui aussi la faillite. Toutefois, ce dernier système n'a paru acceptable non plus à la Commission, vu les graves inconvénients auxquelles une pareille faillite provisoire donnerait lieu. Elle a cru devoir choisir le système de l'unité stricte, système qui a le mérite de la simplicité et de la clarté.

Le Président propose de renvoyer la suite de la discussion sur la faillite à la séance prochaine, et d'aborder maintenant la seconde lecture du projet concernant les successions. C'est parce que le Rapporteur de la 2ième Commission, M. van Cleemputte, est obligé de partir le même soir.

La Conférence se rallie à la proposition du Président.

On aborde donc l'examen du

Projet d'une Convention relative aux successions, aux testaments et aux donations à cause de mort,

tel que le texte en est proposé par le Comité de Rédaction.*)

L'article 1 est adopté sans discussion.

A l'article 2, le Président fait observer que l'ordre des deux mots „testaments" et „donations" est interverti dans le second alinéa, mais il ne croit pas nécessaire de modifier ce texte.

M. Töry propose de supprimer du troisième alinéa les mots: „de leur nation", et si cette suppression était adoptée, de mettre au lieu des mots: „les agents diplomatiques ou consulaires" les termes suivants: „leurs agents diplomatiques ou consulaires."

M. Missir démontre que cette suppression rendra douteux si les agents et consuls peuvent recevoir les testaments d'étrangers qui n'appartiennent pas à leur Etat.

La proposition de M. Töry, mise aux voix, est repoussée par neuf voix contre trois et deux abstentions.

Ont voté pour: la Hongrie, la Suède et la Norvège.

Ont voté contre: l'Allemagne, la Belgique, le Danemark, l'Espagne, la France, l'Italie, les Pays-Bas, la Russie et la Suisse.

Se sont abstenus: l'Autriche et le Portugal.

M. le compte de Selir déclare s'être abstenu parce qu'il lui semble que la difficulté prévue par M. Töry aurait pu être écartée d'une meilleure façon.

L'article 2 lui-même est adopté sans appel nominal, ainsi que l'article 3.

A l'article 3, M. Lainé déclare que la France estime les dispositions des article 4, 5 et 6 d'un caractère doctrinal et même quelque peu dangereux. C'est pourquoi il fait ses réserves en ce qu'il ne veut pas être réputé voter ces articles, si la Conférence les adopte sans appel nominal.

L'article 4 est adopté sans appel nominal.

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*) Voir l'annexe 3 à ce procès-verbal.

On passe à l'article 5, dont M. Dungs propose la suppression. Sur ce point son avis est changé. L'observation du Gouvernement Italien reproduite à la page 74 des „Documents relatifs à la Conférence" lui paraît exacte. Il croit que, en tant qu'il s'agit de la validité de l'acte, l'article 1 suffit et que, pour ce qui concerne la capacité du disposant, l'article 4 pose la règle d'une manière suffisante. On pourrait donc se dispenser de cet article-ci.

MM. Pierantoni et Lainé appuient l'idée de supprimer l'article.

M. Missir met en évidence que si l'article 5 faisait défaut, d'aucuns croiraient applicables aux prohibitions visées la loi personnelle des successeurs, tandis que d'autres s'en référeraient à la loi de la succession, la loi nationale du défunt. L'article sert à éviter cette controverse; il énonce clairement l'application à ce cas spécial du principe de l'article 1.

M. Beichmann signale que le texte de l'article 5 peut être compris dans un double sens. Premièrement dans ce sens que les prohibitions dont parle l'article ne seront respectées que dans les cas où la prohibition en question est sanctionnée tant par la loi nationale du disposant au moment de son décès que par sa loi nationale au moment de l'acte. Mais ensuite dans le sens contraire, savoir: qu'il suffira que la prohibition se trouve dans l'une de ces deux lois. Il demande donc que, si l'article est maintenu, la rédaction soit revisée.

Le Président croit que l'article exige que la prohibition existe d'après les deux lois.

M. Missir croit, au contraire, que l'article a le sens alternatif.

M. van Cleemputte, Rapporteur, dit qu'il résulte de la décision d'hier qu'une disposition, pour être valable, doit satisfaire aux deux lois. Si elle se heurte aux prohibitions soit de la loi nationale du de cujus au moment où il dispose, soit de la loi nationale à laquelle il était soumis lors de son décès, la disposition sera nulle. Voilà ce qui a été voté. Dans tous les cas, on est bien d'accord, que la matière est régie par la loi nationale du disposant, et non par celle du donataire ou du légataire.

M. Pierantoni rappelle que, lors de la première lecture, il s'est prononcé contre cet article; il approuve donc la proposition tendant à la suppression. En droit civil on distingue les incapacités et les indignités de succéder et les incapacités de recevoir par testament. Dans cette seconde catégorie entrent les legs et les institutions faits en faveur de notaires, médecins etc. Or, à ces personnes s'applique l'article 6. Toutefois, il faut appeler l'attention des Gouvernements sur ce point.

Le Président pose la question préalable si l'on veut maintenir l'article ou le supprimer.

M. Missir se déclare pour la suppression, bien que d'abord il ait défendu le maintien de l'article. Il pensait que l'article était clair, mais maintenant il voit qu'il n'en est pas ainsi.

M. van Cleemputte, Rapporteur, déclare que si l'on va supprimer l'article, il reste bien entendu que par cette suppression on ne s'en réfère point à la loi nationale des successeurs; la matière devra être régie par

les articles qui précèdent, car les prohibitions, dont traite l'article, servent à protéger le disposant, et dès lors c'est sa loi nationale qui régit sa capacité. Ainsi les principes déjà consacrés conservent leur application. C'est ce qui a été admis par la Conférence en 1893 et en 1894.

La proposition des Délégués d'Allemagne de supprimer l'article est mise aux voix et adoptée par quatorze voix et une abstention.

Ont voté pour: l'Allemagne, l'Autriche, la Hongrie, la Belgique, le Danemark, l'Espagne, la France, l'Italie, les Pays-Bas, le Portugal, la Roumanie, la Suède, la Norvège et la Suisse.

S'est abstenue: la Russie.

On procède à l'examen de l'article 6.

M. Lainé, bien que se ralliant aux motifs de cet article comme les expose le rapport, propose de le rayer, à cause de l'équivoque à laquelle peut donner lieu sa rédaction. Le mot „capacité" peut avoir deux sens: le pouvoir d'agir et la capacité d'avoir un droit soi-même.

M. van Cleemputte, Rapporteur, comprend que, si le texte est équivoque, on l'éclaircisse, mais pas qu'on le supprime. Il s'étonne de ce que M. Lainé, qui, l'autre jour, trouvait nécessaires des textes limitant et précisant l'étendue et la portée de l'article 1, propose de supprimer un article 6, dont l'objet est de maintenir la légitime application de la règle que l'état et la capacité personnelle du légataire est régie par son statut personnel et non par la loi nationale du défunt. M. Lainé croit que l'article est trop large; mais le rapport de la Deuxième Commission ne laisse aucun doute sur ce que la Commission, comme la doctrine, a eu en vue, savoir: la capacité des successibles, leur état, s'ils sont capables personnellement, s'ils sont nés, s'ils ne sont pas frappés de mort civile, ne sont pas privés de leurs droits civils, tout au moins de leur libre exercice, s'ils ne sont pas plus ou moins incapables comme mineur, femme mariée, etc., etc. Dès que M. Lainé lui même déclare se ranger à l'exposé contenu dans le rapport, la magistrature ou la science, qui consulteront les actes de la Conférence, ne pourront aucunement se méprendre sur la teneur de l'article 6. La Commission a tâché sérieusement de trouver une meilleure rédaction, mais elle a échoué.

M. Lainé persiste à croire que l'article 6 est soit équivoque, soit superflu. Pour le cas où l'article serait maintenu, il propose d'insérer après le mot „régie" les mots suivants: „en tant qu'il s'agit de l'exercice de leurs droits".

M. van Cleemputte, Rapporteur, dit que cet amendement, produit déjà dans la quatrième séance est, selon l'avis du Comité de Rédaction, trop limité. Celui qui est incapable comme ayant été frappé de la mort civile est incapable comme personne, et par conséquent c'est, d'après l'article 6, sa loi nationale qui régit une pareille incapacité. Or, si l'on adopte l'amendement de M. Lainé, article 6 n'embrassera plus ce cas, puisque en l'espèce il ne s'agit pas seulement d'exercer un droit, mais

d'avoir un droit. L'article 6 a une portée plus grande à un autre point de vue. C'est la loi successorale qui appelle le frère, le neveu; mais c'est d'après la loi du successible qu'on doit examiner s'il est frère ou neveu, car c'est cette dernière loi qui régit son état, ses relations de famille, sa filiation. Les rapports de 1893, 1894, celui de 1900 expliquent le texte.

M. Meili estime inadmissible le mot „capacité", notamment parce que dans l'article 6 il sera intraduisible et presque incompréhensible pour les peuples qui emploient la langue allemande.

M. Missir, se range à l'avis de M. Lainé.

Le Président fait observer à M. Meili que l'amendement de M. Lainé n'écarte pas non plus le mot „incapacité" que réprouve tant le Délégué de Suisse. A M. Missir il rappelle que M. Cleemputte vient de donner l'exemple frappant d'un cas qui doit entrer dans l'article 6 et qui serait exclu par l'amendement de M. Lainé.

M. van Cleemputte, Rapporteur, dit que l'amendement serait déjà moins sujet à objection s'il disait „en tant qu'il s'agit de leur état". Toutes les lois emploient l'expression de „l'état et la capacité des personnes" pour indiquer la capacité personnelle par rapport à la naissance, la mort civile, la filiation, l'incapacité du mineur, celle de la femme mariée etc.

L'amendement de M. Lainé est mis aux voix et repoussé par onze voix contre deux et deux abstentions.

Ont voté pour: la France et la Suisse.

Ont voté contre: l'Allemagne, l'Autriche, la Hongrie, la Belgique, le Danemark, l'Espagne, l'Italie, les Pays-Bas, le Portugal, la Russie et la Suède.

Se sont abstenues: la Roumanie et la Norvège.

L'article 6 lui-même, qui devient l'article 5, est adopté sans appel nominal.

L'article 7, qui devient l'article 6, est adopté sauf que la fin sera, sur la proposition du Rapporteur, conçue comme suit: „pour la constitution, la consolidation, le transfert et l'extinction des droits réels ainsi que la possession vis-à-vis des tiers".

L'article 8, qui devient l'article 7, est adopté sauf remplacement dans l'alinéa 3 des mots: „faculté stipulée à l'alinéa 1" par: „faculté réservée par l'alinéa 1" et des mots: „dans le second alinéa" par: „dans l'alinéa 2".

L'article 9, qui devient l'article 8, est adopté.

A l'article 10, M. Töry propose de rédiger cette disposition d'une manière qui éviterait l'emploi des mots: „de la nation". Cela pourrait se faire si l'on rédigeait la dernière partie de cet article en ces termes: „les agents diplomatiques ou consulaires autorisés par la loi de l'Etat auquel le défunt appartenait."

Le Président fait observer à M. Töry que la Conférence a rejeté son amendement identique à l'article 2.

L'article 10, qui devient l'article 9, est adopté sans vote.

A l'article 11, M. Dungs propose de faire terminer cet article par les mots suivants: „et la responsabilité des héritiers vis-à-vis des tiers". La rédaction du projet lui semble ne pas comprendre les rapports entre les héritiers et les légataires.

M. van Cleemputte, Rapporteur, ne croit pas nécessaire de modifier la rédaction qui ne vise que ce qui concerne le règlement des dettes.

L'amendement de M. Dungs est adopté sans appel nominal, de même que l'article 11 ainsi modifié, qui devient l'article 10.

L'article 12, qui devient l'article 11, est adopté.

M. Lainé fait observer que le Comité de Rédaction semble avoir oublié le nouvel article proposé dans la quatrième séance par les Délégués de Suisse et portant ce qui suit: Toutefois le disposant peut, par un testament ou par une déclaration authentique, soumettre sa succession à la loi du pays de son domicile, dans les limités de la quotité disponible fixée par sa loi nationale.

M. Dungs déclare tout d'abord que le mot „authentique". n'exprime pas, dans la terminologie juridique allemande, une notion claire et précise. En outre la proposition lui semble empiéter sur le terrain des législations nationales concernent la forme des testaments.

M. Missir se déclare opposé à l'amendement. La Conférence a eu l'occasion de s'exprimer sur le désir de M. Meili de voir assignée une part plus large à la loi du domicile. Elle n'a pas voulu s'y ranger. Sous ces conditions, l'article proposé n'est pas en conformité avec les principes des projets de la Conférence. En outre, l'amendement veut laisser à l'autonomie des individus ce qui ne doit être décidé que pour la loi. Il est d'accord avec M. Dungs qu'il s'agit ici d'une question d'ordre intérieur que la Convention ne doit toucher.

Le Président répond à M. Missir qu'on peut aussi bien soutenir l'avis contraire. Si la proposition est limitée comme il a été fait, elle est superflue, car le doit y énoncé existe déjà. En votant l'article proposé par les Délégués de Suisse la Conférence ne créera rien de nouveau, mais seulement elle indiquera tant soit peu la direction dans laquelle elle compte pouvoir donner suite aux désirs du Gouvernement Suisse.

M. de Hammarskjöld se rallie aux observations du Délégué de Roumanie. La proposition suisse est manifestement superflue, si elle énonce seulement que chacun peut, daus les limites indiquées par sa loi nationale, tester comme bon lui semble. Mais précisément parce qu'elle paraît superflue, la proposition peut donner lieu à des malentendus, à une interprétation d'après laquelle elle dit quelque chose de plus et fait des exceptions réelles aux règles de la Convention. Il serait notamment inadmissible que la loi

du domicile, applicable d'après la volonté du défunt, ne fût pas soumise aux restrictions contenues dans l'article 8.

M. Pierantoni ne pourra voter l'article proposé par M.M. les Délégués de Suisse. C'est déjà une question bien grave de savoir quels sont les effets d'un changement de nationalité, et il ne pourrait donc d'autant moins admettre la liberté du disposant de changer le statut de la succession par un simple changement de domicile.

M. Meili accepte l'amendement allemand portant suppression du mot „authentique".

La proposition des Délégués de Suisse ainsi modifiée est mise au vote et repoussée par six voix contre six et trois abstentions.

Ont voté pour: l'Allemagne, le Danemark, la France, les Pays-Bas, le Portugal et la Suisse.

Ont voté contre: la Hongrie, la Belgique, l'Espagne, l'Italie, la Roumaine et la Suède.

Se sont abstenues: l'Autriche, la Russie et la Norvège.

La rédaction des dispositions finales est réservée.

Le Vœu proposé par M. Misser est adopté en la forme que lui a donnée le Comité de Rédaction.

Le Président tient à exprimer toute sa gratitude envers la Deuxième Commission, surtout envers son éminent, zélé et éloquent Rapporteur. Si le projet sur les successions aboutit à une Convention, ce résultat sera dû en grande partie à M. van Cleemputte.

M. van Cleemputte regrette d'être obligé de rentrer en Belgique dès ce soir, et d'être empêché d'assister au banquet offert à M. le Président et aux représentants du Gouvernement de S. M. la Reine des Pays-Bas. Avant de quitter la Conférence, il s'associe d'avance, en quelques paroles chaleureuses et éloquentes, à l'hommage mérité qui sera rendu à l'éminent et cher Président, aux très honorés représentants du Gouvernement, en 1893, 1894, 1900. Il espère que son concours dévoué à l'œuvre commune lui vaudra un souvenir d'amitié des autres Délégués.

La prochaine séance qui s'occupera des matières de la faillite et des conditions de validité du mariage est fixée au vendredi 15 juin à 10 heures.

Le séance est levée à 5 heures

Le Président:
Asser.

Le Premier Secrétaire:
J. J. Rochussen.

Les Secrétaires:

Beelaerts de Blokland. *T. R. J. E. Stoop.*
C. van Vollenhoven. *H. van Karnebeek.*

Annexe 1 au Procès-verbal n° 6.

Textes Proposés par le Comité de Rédaction.

Projet d'une Convention relative à la tutelle.

Article 1.

La tutelle d'un mineur est réglée par sa loi nationale.

Article 2.

Si la loi nationale n'organise pas la tutelle dans le pays du mineur au cas où celui-ci aurait sa résidence habituelle à l'étranger, l'agent diplomatique ou consulaire de l'Etat auquel le mineur ressortit pourra y pourvoir, conformément à cette loi, si elle l'autorise à cette fin et si la loi du lieu ne s'y oppose pas.

Article 3.

Toutefois la tutelle du mineur ayant sa résidence habituelle à l'étranger s'établit et s'exerce conformément à la loi du lieu, si elle n'est pas ou si elle ne peut pas être constituée conformément aux dispositions de l'article 1 ou de l'article 2.

Article 4.

L'existence de la tutelle établie conformément à la disposition de l'article 3 n'empêche pas de constituer une nouvelle tutelle par application de l'article 1 ou de l'article 2.

Il sera, le plus tôt possible, donné information de ce fait au Gouvernement de l'Etat où la tutelle a d'abord été organisée. Ce Gouvernement en informera, soit l'autorité qui aurait institué la tutelle, soit, si une telle autorité n'existe pas, le tuteur lui-même.

La législation de l'Etat où l'ancienne tutelle était organisée décide quand cette tutelle prend fin dans le cas prévu par le présent article.

Article 5. (Article 6 de la Commission.)

Dans tous les cas, la tutelle s'ouvre et prend fin aux époques et pour les causes déterminées par la loi nationale du mineur.

Article 6. (Article 7 de la Commission.)

L'administration tutélaire s'étend à la personne et à l'ensemble des biens du mineur, quel que soit le lieu de leur situation.

Cette règle peut recevoir exception quant aux immeubles placés par la loi de leur situation sous un régime foncier spécial.

Article 7. (Article 8 de la Commission.)

En attendant l'organisation de la tutelle, ainsi que dans tous les cas d'urgence, les mesures nécessaires pour la protection de la personne et des intérêts d'un mineur étranger pourront être prises par les autorités locales.

Article 8. (Article 9 de la Commission.)

Les autorités d'un Etat sur le territoire duquel se trouvera un mineur étranger dont il importera d'établir la tutelle, informeront de cette situation, dès qu'elle leur sera connue, les autorités de l'Etat auquel le mineur ressortit.

Les autorités ainsi informées feront connaître le plus tôt possible aux autorités qui auront donné l'avis, si la tutelle a été ou sera établie.

Le Président: *Asser.*

Annexe 2 au Procès-verbal n° 6.

Rapport de la Quatrième Commission*) sur les dispositions concernant la faillite.

La Quatrième Commission, chargée principalement de préparer un avant-projet sur la question des faillites, a l'honneur de soumettre à la Conférence le résultat de son travail, avec les motifs qui le justifient.

La Commission a vu, avant tout, que le Protocole Final de la Deuxième Conférence contenait, sous le titre de Dispositions concernant la faillite, sept articles précédés du préambule suivant: „La Conférence, après avoir examiné l'avant-projet d'un règlement contenant des principes généraux sur la faillite dans les rapports internationaux, présenté par la Vième commission, estime que cet avant-projet, sauf à être revisé et complété, peut servir utilement de base à de nouvelles délibérations."

Ce préambule a inspiré continuellement les travaux de la Quatrième Commission, qui avait donc essentiellement à reviser et à compléter les dispositions arrêtées en 1894, en vue de nouvelles délibérations de la Conférence en séance plénière.

L'attention de la Commission a également été attirée sur les documents suivants:

1° L'Avant-projet d'une Convention internationale présenté à la Conférence de 1894 par M. Asser, son éminent Président (Actes de la Conférence de 1894, pag. 21);

2° Les Résolutions prises en septembre 1880 à Turin par le Congrès juridique italien (ibidem, pag. 63);

3° Les Règles adoptées en mars 1894 par l'Institut de droit international (ibidem, pag. 65);

4° L'article 8, concernant la faillite, de la Convention conclue, le 8 juillet 1899, entre la France et la Belgique, sur la compétence judiciaire et sur l'autorité et l'exécution des décisions judiciaires, des sentences arbitrales et des actes authentiques (voir l'annexe II au présent rapport).

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*) Cette Commission était composée de: MM. Pierantoni, Délégué d'Italie, Président; M. de Paepe, Délégué de Belgique; M. Feith, Délégué des Pays-Bas; M. Roguin, Délégué de Suisse, Rapporteur.

La Commission avait la bonne fortune de compter au nombre de ses membres M. de Paepe, l'un des négociateurs de la Convention mentionnée et elle a utilisé celle-ci dans une large mesure. Elle a également reçu de son membre éminent, M. Feith, sur la nouvelle législation néerlandaise du 30 septembre 1893, mise en vigueur le 1ier septembre 1896, des renseignements fort importants.

Au surplus, aucun des membres de la Commission ne savait, en venant à La Haye, qu'il aurait à s'occuper de la question de la faillite. Et, comme d'autre part, malgré le vœu exprimé en 1894 par M. Pierantoni (Actes, pag. 69), aucun dossier de renseignements officiels sur les législations et les jurisprudences n'a pu être formé, la Commision sera sobre d'indications sur le droit positif actuel; elle n'a pas cherché à faire preuve d'érudition, et elle s'attachera exclusivement, dans le présent rapport, à justifier les propositions qu'elle a l'honneur de présenter en vue d'une meilleure réglementation internationale de la matière.

Dès le début de son travail, la Commission a dû, à son grand regret, constater une assez profonde divergence de vues, sur la question capitale de l'unité de la faillite, entre son illustre Président, M. le Sénateur Pierantoni, et les trois autres membres. Ce désaccord s'est montré irréductible, et M. Pierantoni s'est réservé le droit de faire connaître à la Conférence sa manière de voir par une déclaration spéciale. Il n'en a pas moins consenti à continuer à diriger les travaux de la Commission avec la haute autorité qui lui appartient et avec infiniment de bonne grâce. Il a bien voulu aussi faire connaître ses opinions sur les questions spéciales discutées. La Commission en a très largement profité; et elle tient à offrir à son éminent et cher Président le tribut empressé de sa reconnaissance.

La Commission a estimé utile d'aborder et de résoudre, avant de discuter des articles, un certain nombre de questions générales et importantes, sur lesquelles elle va faire connaître le résultat de ses délibérations.

A. Question de l'unité de la faillite.

L'on sait que la presque unanimité des lois et jurisprudences des Etats représentés ne reconnaît pas le principe de l'unité de la faillite. — C'est la question cardinale du sujet. — Ni la Commission, ni la Conférence de 1894 n'avaient cru pouvoir sanctionner d'une façon nette le principe de l'unité. D'après les articles proposés et arrêtés, la déclaration de faillite pouvait être prononcée par l'autorité compétente dans chaque Etat, d'après la loi de cet Etat. Le jugement devait bien, moyennant exéquatur, recevoir exécution dans tous les autres pays. Mais, cette extension de la faillite pouvait être paralysée par des jugements déclaratifs rendus dans l'un quelconque de ces autres Etats; et il devait en résulter la coëxistence de toutes les liquidations, régulièrement ouvertes, d'après les lois intérieures. Par exemple, faillite pouvait être déclarée dans l'Etat A, celui d'une

succursale, mais, il était manifestement impossible d'en exiger l'extension dans le pays B, celui de l'établissement principal. D'autre part, le projet ne permettait pas d'obliger l'Etat A à reconnaître l'extension de la faillite ouverte dans le pays B. En un mot, le vice des dispositions de 1894 était que la compétence en matière de déclaration de faillite n'état aucunement réglée au point de vue international.

La Commission actuelle (moins M. Pierantoni) a décidé de combler cette lacune, et elle a adopté le système de l'unité rigoureuse de la faillite dans le pays du principal établissement. Cela est également le principe du traité franco-belge.

La Commission a d'ailleurs discuté longuement la solution de l'Institut de Droit international, suivant lequel la faillite peut aussi avoir lieu dans l'Etat d'un établissement secondaire, avec effets restreints aux limites de ce pays, et sauf dessaisissement éventuel de ses autorités au profit de celles de l'Etat dans lequel le débiteur a le centre de ses affaires. Mais, cette solution a paru boiteuse et peu pratique. Elle aurait pour effet de multiplier les déclarations de faillite dans les Etats de simples établissements secondaires; ce qui produirait beaucoup de complications. D'autres, plus graves encore, résulteraient de la rétractation obligatoire de ces faillites avec survivance de celle-là seule qui viendrait à être prononcée dans l'Etat de l'établissement principal. Il semble que le droit des créanciers de poursuivre individuellement le débiteur au lieu de chaque succursale, tant qu'aucune faillite centrale n'a été ouverte, et leur faculté de provoquer des mesures conservatoires diverses à leur profit, suffisent pour garantir tous leurs intérêts légitimes.

Du moment que l'unité de la faillite doit être assurée au cas d'une liquidation ouverte dans l'Etat du siège des affaires, pourquoi permettre l'existence provisoire d'une pluralité de concours?

Il serait, du reste, entièrement inutile d'énumérer de nouveau, à des hommes aussi au courant des affaires que MM. les Délégués, les complications, les frais, les inégalités entre créanciers, les difficultés de toute sorte qui résultent de la coëxistence permanente de plusieurs liquidations dans des Etats différents, des régimes variés de privilèges, de la compétence de plusieurs tribunaux pour les actions naissant de la faillite, etc. Tout cela a été cent fois mis en pleine lumière.

Cependant, la Commission ne se dissimule pas la difficulté de faire admettre dans certains Etats le principe de l'unité de la faillite. Il y a, en cette matière, d'autres questions en jeu que celle proprement juridiques Mais, le moment semble venu de subordonner des considérations en somme secondaires à des intérêts plus élevés et plus généraux. Et, en définitive, ce que chaque Etat semble, à première vue, perdre en souveraineté, en admettant sur son territoire les effets de faillites étrangères, il le rattrape en obtenant l'exécution chez les autres des liquidations ouvertes dans les limites de ses propres frontières. Finalement, il subsiste pour tous les Etats le bénéfice résultant d'une énorme simplification, et de solutions plus équitables.

B. Question de la faillite des non commerçants.

L'on sait que, dans beaucoup d'Etats, les non-commerçants, par exemple les agriculteurs, peuvent être mis en faillite comme les commerçants eux-mêmes, et suivant les mêmes règles. (Voir Rapport de 1894, Actes, pag. 59.) — La Commission de 1894 n'avait pas voulu restreindre les effets de ses propositions aux seules faillites de commerçants. (Voir Actes, pag. 60.) Cette manière de voir ne paraît pas avoir rencontré d'opposition dans la Conférence. Mais, les résolutions figurant au Protocole Final ne contiennent aucune solution bien nette à cet égard. — La Commission actuelle, moins M. de Paepe, propose l'extension des règles projectées même aux liquidations non commerciales. — Sauf décision contraire de la Conférence, ces règles seraient donc applicables aux faillites (Konkurse) ouvertes en Allemagne, par exemple, à l'égard de débiteurs ne se livrant proprement ni au commere, ni à aucune industrie; elles seraient également applicables au déconfitures civiles constatées par jugement dans les pays où cette institution se trouverait réglementée d'une manière analogue à celle de la faillite commerciale. — En somme, le mot faillite figurant dans le projet doit être compris d'une façon large, et comme visant toute liquidation générale, et ouverte par jugement, des biens d'un débiteur quelconque.

La solution proposée par la Commission résulte du sens général donné au mot faillite et de la disposition formelle de l'article 13. — Au surplus, les Etats qui n'admettraient pas qu'un de leurs nationaux non commerçant, mis en faillite dans un autre pays, pût être frappé, pour cette raison, d'incapacités et de déchéances, pourront maintenir cette manière de voir, en vertu de ce qui va être dit sous la lettre D.

C. Faillite des sociétés.

La Commission a cru devoir compléter et préciser les dispositions arrêtées en 1894 en statuant très nettement à l'article 1 de son projet que celui-ci embrasse les faillites des sociétés. Ces liquidations sont, en effet, de beaucoup les plus nombreuses et les plus importantes dans les rapports internationaux. Les laisser en dehors de la réglementation serait énormément restreindre la portée de celle-ci.

Toutefois, la Commission propose, pour donner satisfaction à des désirs exprimés dans la Conférence de 1894, de laisser en dehors des stipulations internationales tout ce qui a trait aux liquidations d'entreprises concessionnées soit par l'Etat soit par une autre autorité publique, comme les compagnies de chemins de fer, celles de bateaux à vapeur, d'exploitation de forces motrices, etc. — La réglementation internationale ne s'appliquerait pas non plus aux entreprises à propos desquelles des mesures spéciales sont prises dans l'intérêt des créanciers. Il en est ainsi des compagnies d'émigration, d'assurances ou autres, desquelles est exigé dans certains Etats des cautionnements, dépôts, emplois spéciaux de fonds, à titre de capital de garantie, etc. — Chaque Etat dans les limites duquel opéreraient des entreprises semblables pourrait leur appliquer, d'une manière souveraine

et indépendante, soit son droit commun en matière de faillite, soit les règles spéciales auxquelles il aurait cru devoir soumettre la liquidation de semblables entreprises. Relativement à celles-ci, il pourrait y avoir coëxistence de liquidations ouvertes dans plusieurs Etats.

Toutefois, cette restriction à l'application des principes de l'unité de la faillite des sociétés a été fortement combattue par M. de Paepe. Il trouve qu'il n'y a pas de raison sérieuse de s'écarter de la règle applicable aux autres sociétés.

D. Incapacités et déchéances.

La faillite a constamment pour effet de retirer au failli l'administration de ses biens. Cette incapacité-là se trouve réglementée par le projet.

Mais, dans certains Etats, le failli peut être frappé, en outre, d'incapacités, soit de déchéances spéciales de droit civil, comme la perte de certains droits sur la fortune de sa femme, ou à l'égard de ses enfants. Le projet ne touche en aucune mesure à ces incapacités ou déchéances, dont la réglementation au point de vue international rentrerait naturellement dans les autres conventions projetées.

Enfin, certaines législations privent les faillis des droits politiques, d'une façon plus ou moins complète. Le projet actuel laisse cette question complètement de côté. Même s'il était adopté, chaque Etat conserverait le droit de trancher à sa façon le point de savoir, si une déchéance politique peut ou doit résulter de la faillite dont un ressortissant aurait été l'objet à l'étranger.

Après cette étude des principales questions, la Commission va fournir quelques explications sur la série des articles proposés.

Article 1. La disposition rerait applicable aux faillites de ressortissants d'Etats non signataires de la convention projetée, mais bien entendu seulement dans la mesure où ces liquidations intéresseraient plusieurs des Etats contractants. Le premier alinéa pose le principe de la compétence exclusive de l'autorité de l'Etat dans lequel le débiteur a son principal établissement. La disposition vise le principal établissement d'affaires, et non le simple domicile particulier du débiteur. S'il arrivait donc que ce domicile ne se trouvât pas dans le même Etat que le siège des affaires de l'intéressé, la faillite serait à déclarer dans le deuxième Etat.

Le deuxième alinéa décide que, si le débiteur est une société, la faillite doit être ouverte au siège des opérations sociales.

La Commission estime aussi que, dans le cas où le centre effectif des affaires sociales se trouverait, comme il arrive quelquefois, dans un autre Etat que le siège statutaire de la société, l'autorité compétente serait celle du premier de ces pays, du moins dans l'hypothèse où il y aurait compétition de deux jugements déclaratifs. Mais la Commission n'a pas jugé qu'il fût nécessaire d'articuler cette solution dans le projet.

Il va de soi également que la simple élection de domicile faite par un individu ou une société ne peut être prise en considération, quand il

s'agit de la détermination de l'autorité compétente pour ouvrir une liquidation générale dans l'intérêt des créanciers

Article 2. Le commentaire de cette disposition a été fourni par anticipation sous lettre C.

Article 3. Le texte paraît clair et ne nécessite aucune explication. Voir l'article 5 du Protocole Final de 1894.

Article 4. La disposition s'explique d'elle-même. Il est évident que l'un des principaux effets de la faillite sera de mettre fin au droit de poursuite individuelle de chaque créancier.

La Commission a discuté la question de savoir, s'il convenait d'adopter des dispositions indiquant de quelle façon le feraient la formation et la distribution de l'actif. Elle a décidé, contrairement à l'avis de son Rapporteur, de n'en insérer aucune. — La majorité dans la Commission part de l'idée qu'il y a dans ce domaine, une foule de détails difficiles à régler d'une manière satisfaisante dans une convention internationale. Elle pense, d'ailleurs, que les principales solutions découlent plus ou moins de la nature des choses et résultent implicitement des deux principes adoptés, savoir la compétence du tribunal du principal établissement, et la reconnaissance partout des effets de la faillite. Voici comment les choses se passeraient: les immeubles appartenant au failli seraient, une fois le jugement déclaratif muni de l'exéquatur, liquidés en conformité de la loi du pays de la situation; et l'actif net éventuel, une fois les charges réelles satisfaites, serait versé dans la masse générale. Quant aux biens mobiliers, ils seraient toujours, moyennant l'exéquatur du jugement ouvrant la faillite, mis à la disposition du représentant de la masse et liquidés par lui, soit dans le pays et conformément à la loi de la situation, soit dans l'Etat et selon la loi de la faillite. La question des droits réels mobiliers fait d'ailleurs l'objet des articles 9 et 10.

Article 5. La Commission propose d'adopter, quant à la détermination du droit des représentants de la masse, une distinction qui résulte de la nature des choses et qui est consacrée par la jurisprudence de divers pays, comme par la convention franco-belge, article 8. L'administrateur de la faillite pourra prendre toutes mesures conservatoires et même ester en justice, comme demandeur ou défendeur, sans avoir besoin de l'exéquatur du jugement déclaratif. — Au contraire, cet exéquatur sera requis pour toutes les mesures ayant le caractère d'actes d'exécution. L'administrateur pourrait même sans exéquatur, donner quittance aux débiteurs du failli: ce n'est pas un acte d'exécution.

Article 6. La Commission a supprimé la lettre c de l'article 3 arrêté en 1894, parce que cette condition résulte déjà du principe de l'unité de la faillite.

Article 7. Il a paru utile de dire que la demande d'exéquatur peut être faite, non seulement par le représentant de la masse, mais aussi par toute partie intéressée, comme un créancier, ou le débiteur failli lui-même.

Article 8. Cette disposition est empruntée au § 3 de l'article 8 de la convention franco-belge.

Article 9. L'ordre des créanciers est déterminé en principe par la loi de la faillite. Cette législation dira notamment quels sont les privilèges généraux ou spéciaux qui n'existent comme tels et ne sont opposables aux tiers qu'en conséquence de la déclaration de la faillite et à partir de la date de celle-ci. Les hypothèques et privilèges affectant les immeubles et ayant le caractère de droits réels seraient soumis à la loi de la situation. Mais, il existe aussi des droits de préférence mobiliers, tels que ceux de gage et de rétention, qui se fondent sur un état de possession ou de détention antérieur à la déclaration de faillite. Les titulaires des droits réels, soit immobiliers soit mobiliers, doivent pouvoir, en bonne justice, réclamer l'application de la loi de situation matérielle des biens affectés des dits droits. L'article a pour but, dans un troisième alinéa, d'assurer la position des intéressés dont il vient d'être question.

Article 10. La disposition a pour but de protéger, d'une manière équitable, les mêmes intéressés, quant à la compétence des tribunaux.

Article 11. Fidèle à la méthode pratiqué par la Conférence la Commission propose l'adoption d'une disposition générale déterminant la compétence du tribunal de la faillite Cette compétence générale serait étendue à toutes les actions nées directement de la déclaration de faillite, sauf le cas de compétences spéciales exclusives. La Commission ne pouvait songer à énumérer ces dernières. Le système doit en figurer principalement dans la réglementation internationale des questions relatives aux obligations. Mais, la Commission indiquera à titre d'exemples de compétences exclusives spéciales, susceptibles de tenir en échec celle du tribunal de la faillite, la compétence de la juridiction de la situation d'un immeuble, de l'action principale en matière de compensation, ou d'action reconventionnelle, etc. — Le but de l'article 11 n'est d'ailleurs pas d'établir incidemment une réglementation générale de la compétence, mais seulement de délimiter celle du tribunal du pays de la faillite. — En particulier, le tribunal de la faillite pourra se saisir des actions en responsabilité contre les fondateurs les administrateurs ou directeurs d'une société mise en faillite; ces actions sont des suites directes de la déclaration de faillite.

Article 12 L'article a pour but d'obliger à observer dans tous les Etats, et sans exéquatur préalable, les effets du concordat qui a suivi la déclaration de faillite.

Quant au concordat ou sursis concordataire obtenu par le débiteur sans faillite préalable, la Commission s'est partagée en deux fractions égales sur la question de savoir s'il convenait de statuer l'observation obligatoire de ces arrangements. Les uns répondent affirmativement, les autres, partant de l'idée que les traités préventifs n'offrent pas les mêmes garanties que les concordats consécutifs à la faillite refusent d'en reconnaîtra internationalement des effets. Dans cette deuxième opinion, les créanciers domiciliés dans d'autres Etats que celui de l'établissement principal du débiteur conserveraient leur droit de poursuite individuelle. — La Conférence prononcera entre les deux systèmes.

Article 13. Cette disposition étend aux non commerçants l'application de la convention projetée. La question a été discutée dans la première partie du présent rapport, sous lettre B. — La solution est conforme à l'opinion de la majorité des membres de la Commission, qui ont eu le regret de se trouver sur ce point en désaccord avec leur éminent collègue, M. de Paepe.

En conséquence la Commission soumet à la Conférence les résolutions suivantes:

Article 1.

L'autorité exclusivement compétente pour déclarer la faillite d'un débiteur ayant son principal établissement dans l'un des Etats contractants est celle de l'Etat dans lequel il a cet établissement.

Si le débiteur est une société, l'autorité compétente est celle de l'Etat dans lequel se trouve le siège des opérations sociales.

Article 2.

La présente Convention ne s'applique pas aux entreprises de travaux publics et autres, concessionnées par l'Etat ou par une autre autorité publique.

Elle ne s'applique pas non plus aux entreprises à propos desquelles des mesures législatives ou réglementaires spéciales sont prises dans l'intérêt des créanciers.

Article 3.

La nomination et les pouvoirs des administrateurs de la faillite, les formes à suivre dans la procédure de faillite, l'admission des créances, la formation du concordat et la distribution de l'actif entre les créanciers nationaux ou étrangers, seront réglés par la loi du lieu où la faillite a été déclarée.

Article 4.

La déclaration de faillite prononcée dans l'un des Etats contractants par l'autorité compétente aux termes de l'article 1 sera reconnue et produira ses effets dans tous les autres Etats contractants, de la manière et dans la mesure déterminées par les articles suivants.

Article 5.

Sans même que le jugement de mise en faillite ait été déclaré exécutoire, le syndic, curateur ou autre administrateur de la faillite, sous quelque dénomination que ce soit, dûment nommé conformément à la loi de l'Etat où la faillite a été déclarée pourra prendre, dans chaque Etat contractant, toutes mesures conservatoires ou d'administration concernant la masse faillie.

Il pourra également, sans exéquatur préalable ester en justice, soit comme demandeur, soit comme défendeur, en qualité de représentant du failli ou de la masse.

Mais, l'administrateur de la faillite ne pourra procéder à des actes d'exécution qu'autant que le jugement en vertu duquel il agira aura été revêtu de l'exéquatur en application de la loi de l'Etat où les dits actes devraient avoir lieu.

Article 6.

L'exéquatur sera accordé si le requérant établit:

a. que le jugement déclaratif émane de l'autorité compétente d'après la loi de l'Etat où il a été rendu;

b. que le jugement est exécutoire dans cet Etat.

Article 7.

La procédure d'exéquatur est réglée par la loi de l'Etat où la demande en est formée.

L'exéquator pourra être demandé, non seulement par l'administrateur de la faillite, mais encore par toute partie intéressée.

Article 8.

Lorsque la faillite déclarée dans l'un des Etats contractants comprend une succursale, ou un établissement dans un autre de ces Etats, les formalités de publicité exigées par la législation de ce dernier pays sont remplies, à la diligence de l'administrateur de la faillite, au lieu de cette succursale ou de cet établissement.

L'existence de la faillite ne sera opposable aux tiers qu'à partir du moment déterminé par cette publicité.

Article 9.

L'ordre des créanciers est fixé par la loi de l'Etat de la faillite, sous les réserves suivantes:

Les droits réels d'hypothèque et de privilège sur les immeubles sont soumis à la loi de l'Etat où les immeubles sont situés.

Les droits de préférence sur les meubles qui se fondent sur un état de possession ou de détention antérieur à la déclaration de faillite sont soumis à la loi de l'Etat ou les meubles sont situés.

Article 10.

Les titulaires des droits immobiliers et mobiliers mentionnés à l'article précédent conservent, à l'égard de la masse faillie, la même position juridique qu'ils avaient à l'égard du débiteur.

S'il y a contestation à propos des dits droits, le tribunal de la situation sera compétent.

Article 11.

Le tribunal de la faillite sera compétent pour connaître de toutes actions nées directement de la déclaration de faillite, sauf le cas de compétences spéciales.

Article 12.

Le concordat postérieur à la déclaration de faillite produira ses effets dans tous les Etats contractants, s'il a été accordé ou homologué par l'autorité compétente, avec les formalités prescrites par la loi de l'Etat où la faillite a été ouverte.

Article 13.

Les dispositions de la présente Couvention sont applicables aux liquidations, quelle qu'en soit la dénomination, des affaires d'un débiteur non commerçant ne satisfaisant pas à ses engagements.

Le Rapporteur: *E. Roguin.*

Le Président: *A. Pierantoni.*

Annexe I an rapport de la IVième Commission.

Note de M. Pierantoni.

La Deuxième Conférence, en 1894, adopta les déclarations suivantes présentées par la Vième Commission:

1° que la création d'une loi internationale unique sur la faillite était une impossibilité et qu'il fallait par conséquent respecter la diversité de législation existant sur la matière;

2° que la Commission faisait une œuvre préparatoire destinée à être revue et complétée à l'aide d'études comparatives des lois des divers pays.

La Commission fit connaître que les Etats représentés dans la Conférence se divisaient en deux groupes distincts. L'un restreint l'application de la procédure de la faillite aux seuls commerçants; l'autre l'étend aussi aux non commerçants. En tenant compte de cet état de choses la Commission qui adopta en grande partie le projet présenté par notre éminent Président, M. Asser, ne proposa pas à la Conférence de prendre une énonciation limitative laissant aux Puissances qui auraient à contracter le soin de déterminer la mesure de la réciprocité qu'elles consentiraient à s'accorder.

Comme les législations des différents pays n'étaient pas d'accord sur les règles de compétence, la Commission adopta les articles 1 et 2 du projet, qui marquaient un progrès évident et notable vers l'unité de la faillite, comme les dispositions invoquées avaient pour conséquence d'étendre les effets d'une faillite prononcée par le juge compétent d'un pays à tous les biens que le débiteur peut posséder sur le territoire d'autres Etats.

La procédure à suivre était basée sur le respect de l'organisation judiciaire et des règles de procédure en vigueur dans certains pays: l'exéquatur pouvait être requis par voie de commission rogatoire de tribunal à tribunal ou d'une autre manière (voir les Procès-verbaux.

Je tiens à rappeler ici la déclaration que j'eus l'honneur de faire: en consacrant dans le procès-verbal la déclaration que l'on faisait une œuvre ayant un caractère préliminaire, j'invitais les Délégués à faire parvenir à la Conférence prochaine les textes des lois sur la faillite et les projets de modification, d'y joindre des indications sur les cas de jurisprudence et, le cas échéant, les critiques des jurisconsultes.

Rien n'a été fait. Les Gouvernements qui acceptèrent le Projet de Programme de la IIIième Conférence n'envoyèrent ni les textes des lois ni aucune critique des délibérations. La Commission nouvelle fut composée de nouveaux Délégués. Notre éminent confrère M. Roguin a déjà informé la Conférence sur les renseignements donnés à la Commission. Les Pays-

Bas, par une loi mise en vigueur le 1 septembre 1896, ont aboli la distinction entre les dettes civiles et les dettes commerciales. La France et la Belgique, dans leur convention sur la compétence judiciaire du 8 juillet 1899, acceptèrent le principe de l'unité de la faillite, adoptant en matière de compétence pour la déclaration de la faillite d'un commerçant le lieu du domicile, et pour la faillite d'une société commerciale le lieu du siège social.

A l'ouverture des travaux de la Commission j'ai cru de mon devoir de recommander aux nouveaux membres de la Commission de ne pas sortir des limites qui consistaient à reviser et à compléter les dispositions adoptées en 1894. Le texte de la convention franco-belge ne prouvait point que l'impossibilité reconnue en 1894 avait disparu. En effet, elle est limitée aux seuls commerçants et aux sociétés commerciales françaises ou belges, tandis que plusieurs Puissances ont des législations différentes: il y a un groupe d'entre elles qui ne reconnaît pas la démarcation entre les dettes civiles et commerciales. Elle proclame la compétence du lieu du domicile du commerçant, tandis qu'il y a des législations qui ont écarté le domicile, et préfèrent dans l'organisation des compétences internes l'établissement principal. On peut comprendre la convention franco-belge pour deux pays qui ont une grande analogie d'institutions juridiques, qui parlent la même langue et qui sont limitrophes; mais la Conférence a une tâche plus large, moins partielle. On peut comprendre la modification d'un système déjà adopté quand des études approfondies et la solution des difficultés antérieurement reconnues ont fourni de nouveaux éléments de perfectionnement d'un projet; mais je ne saurais recommander l'exemple d'une modification fondamentale motivée seulement par des convictions individuelles et par le fonctionnement du droit conventionnel qui régit les patries des Délégués.

Tout en restant fidèle aux délibérations de la IIième Conférence, je tiens à constater la haute valeur de mes confrères et leur zèle pour le progrès du droit international privé; mais pénétré de cette vérité que nous devons nous contenter de ce qui est réalisable, je crains que la proposition de réformes plus radicales ne puisse retarder l'œuvre d'un progrès graduel et partique, qui se recommande aux Gouvernements civilisés dont nous sommes les mandataires.

J'attends la décision supérieure de la Conférence pour savoir si elle accepte la nouvelle base du projet préférée par mes honorables collègues.

A. Pierantoni.

Annexe II au rapport de la IVième Commission.

Convention conclue le 8 juillet 1899 entre la Belgique et la France sur la compétence judiciaire et sur l'autorité et l'exécution des décisions judiciaires, des sentences arbitrales et des actes authentiques.

Extrait.

Article 8, § 1. Le tribunal du lieu du domicile d'un commerçant, belge ou français, dans l'un ou l'autre des deux pays, est seul compétent

pour déclarer la faillite de ce commerçant. Pour les sociétés commerciales françaises ou belges ayant leur siège social dans l'un des deux pays, le tribunal compétent est celui de ce siège social.

Les commerçants des deux nations, dont le domicile n'est ni en Belgique ni en France, peuvent être, néanmoins, déclarés en faillite dans l'un des deux pays, s'ils y possèdent un établissement commercial. Dans ce cas, le tribunal compétent est celui du lieu de l'établissement.

§ 2. Les effets de la faillite déclarée dans l'un des deux pays, par le tribunal compétent d'après les règles qui précèdent, s'étendent au territoire de l'autre. Le syndic ou le curateur peut, en conséquence, prendre toutes mesures conservatoires ou d'administration, et exercer toutes actions comme représentant du failli ou de la masse. Il ne peut toutefois procéder à des actes d'exécution qu'autant que le jugement en vertu duquel il agit a été revêtu de l'exequatur, conformément aux règles édictées par le titre II ci-après. Le jugement d'homologation du concordat, rendu dans l'un des deux pays, aura autorité de chose jugée dans l'autre et y sera exécutoire d'après les dispositions du même titre II.

§ 3. Lorsque la faillite déclaré dans l'un des deux pays comprend une succursale ou un établissement dans l'autre, les formalités de publicité exigées par la législation de ce dernier pays sont remplies, à la diligence du syndic ou du curateur, au lieu de cette succursale ou de cet établissement.

§ 4. Les effets des sursis, concordats préventifs ou liquidations judiciaires, organisés par le tribunal du domicile du débiteur dans l'un des deux Etats, s'étendent, dans la mesure et sous les conditions ci-dessus spécifiées, au territoire de l'autre Etat.

Article 9. Les mesures provisoires ou conservatoires organisées par les législations française et belge peuvent, en cas d'urgence, être requises des autorités de chacun des deux pays, quel que soit le juge compétent pour connaître du fond.

Annexe 3 au Procès-verbal n° 6.

Textes Proposés par le Comité de Rédaction.

Projet d'une Convention relative aux successions, aux testaments et aux donations à cause de mort.

Aritcle 1.

Les successions sont soumises à la loi nationale du défunt, quels que soient la nature des biens et le lieu où ils se trouvent.

La validité intrinsèque et les effets des dispositions testamentaires ou des donations à cause de mort sont régis par la loi nationale du disposant.

Article 2.

Les testaments et les donations à cause de mort sont valables, en ce qui concerne la forme, s'ils satisfont aux prescriptions soit de la loi du lieu où ils sont faits, soit de la loi du pays auquel appartenait le disposant au moment où il disposait.

Néanmoins, lorsque pour les donations ou pour les testaments faits par une personne hors de son pays, la loi nationale de cette personne exige, comme condition substantielle, que l'acte ait une forme déterminée par cette loi nationale, le testament ou la donation ne peut être fait dans une autre forme.

Sont valables en la forme les testaments des étrangers, s'ils ont été reçus conformément à leur loi nationale, par les agents diplomatiques ou consulaires de leur nation. La même règle s'applique aux donations à cause de mort.

Article 3.

La capacité de disposer par testament ou par donation à cause de mort est régie par la loi nationale du disposant.

Article 4.

La loi nationale du défunt ou du disposant est celle du pays auquel il appartenait au moment de son décès.

Néanmoins, la capacité du disposant est soumise aussi à la loi du pays auquel il appartient au moment où il dispose.

Toutefois, si le disposant avait dépassé l'âge de la capacité, fixé par la loi du pays auquel il appartenait au moment de la disposition, le changement de nationalité ne lui fait pas perdre cette capacité à raison de l'âge.

Article 5.

Les prohibitions de disposer au profit de certaines personnes, soit d'une manière absolue, soit au delà de certaines limites, sont régies par la loi nationale du disposant tant au moment de son décès qu'au moment de l'acte.

Article 6.

La capacité des successibles, des légataires et des donataires est régie par leur loi nationale.

Article 7.

Les immeubles héréditaires et ceux légués ou donnés sont soumis à la loi du pays de leur situation, en ce qui concerne les formalités et les conditions de publicité, que cette loi exige pour la constitution, la consolidation, le transfert, l'extinction des droits réels et la possession vis-à-vis des tiers.

Article 8.

Nonobstant les articles qui précèdent, la loi nationale du défunt ne sera pas appliquée lorsqu'elle serait de nature à porter atteinte, dans le pays où l'application devrait avoir lieu, soit aux lois impératives soit aux

lois prohibitives, consacrant ou garantissant un droit ou un intérêt social, déclarées par une disposition expresse applicables aux successions, aux donations à cause de mort et aux testaments des étrangers.

Est également réservée l'application des lois territoriales qui ont pour but d'empêcher la division des propriétés rurales.

Les Etats contractants s'engagent à se communiquer les lois prohibitives ou impératives au sujet desquelles ils auraient fait usage de la faculté stipulée à l'alinéa 1, ainsi que les lois territoriales dont il s'agit dans le second alinéa.

Article 9.

Sans préjudice des dispositions faites dans les limites fixées par la loi nationale du défunt, il ne sera admis aucun prélèvement ni aucune inégalité au profit des nationaux des Etats contractants à raison de la nationalité des successibles, des légataires ou des donataires appartenant à ces Etats.

Article 10.

Les autorités de l'Etat sur le territoire duquel la succession s'est ouverte prendront les mesures nécessaires pour assurer la conservation des biens héréditaires, à moins qu'il n'y soit pourvu, en vertu de conventions spéciales, par les agents diplomatiques ou consulaires de la nation à laquelle le défunt appartenait.

Dispositions générales.

Article 11.

Les Etats contractants ont conservé leur liberté de régler ce qui concerne la séparation des patrimoines, l'acceptation sous bénéfice d'inventaire, la renonciation et la responsabilité des héritiers à l'égard des créanciers.

Article 12.

La présente Convention ne s'applique que dans le cas où le défunt, au moment de son décès, appartenait à un des Etats contractants.

Voeu.

(Proposition de M. Missir.)

Les tribunaux du dernier domicile du défunt où la succession est ouverte sont compétents quant aux mesures conservatoires concernant les biens successoraux et à la liquidation de la succession.

Ils sont également compétents pour juger, jusqu'au partage effectué, toutes les actions et contestations qui peuvent avoir lieu entre les prétendants-droit aux biens successoraux.

Voeu.

La Conférence émet le vœu que la compétence des tribunaux en matière de successions, de testaments et de donations à cause de mort fasse l'objet d'une entente ultérieure.

Procès-verbal n° 7. (Séance du 15 juin 1900.)

Le séance est ouverte à 10¼ heures.

Sont présents;

M.M. Asser, Président, Dungs, Kriege, Schumacher, Töpy, de Paepe, van den Bulcke, Matzen, Renault, Pierantoni, Rahusen, Feith, Heemskerk, Ort, le comte de Selir, Missir, de Martens, Goussakowsky, de Hammerskjöld, Beichmann, Meili et Roguin.

L'échange de vues sur les propositions de la Quatrième Commission concernant

la Faillite

est repris.

M. Schumacher demande à faire une proposition, non pour interrompre l'échange de vues déjà abordé, mais seulement pour arriver à un résultat pratique. Le rapport et l'avant-projet sur la faillite soumis à la Conférence par la 4ième Commission témoignent d'une étude approfondie de la matière et présentant toutes les qualités requises pour servir de base aux discussions de la séance plénière en vue d'établir un projet de convention. Le seule chose qui empêche la Conférence de discuter et de voter sur cette œuvre d'un mérite incontestable, c'est que la grande majorité des Délégués n'y sont pas autorisés par leurs Gouvernements. Le Délégué d'Autriche propose donc à la Conférence d'émettre le vœu que le Gouvernement des Pays-Bas, après avoir fait examiner le rapport et l'avant-projet par sa Commission permanente pour le Droit International Privé, veuille les soumettre, au moment où il le jugerait opportun, aux Etats représentés ici en les invitant à donner leurs avis par écrit, conformément à la manière heureuse qui a été adoptée pour préparer la présente session.

M. Schumacher propose également que cette voie soit suivie pour les rapports et les avant-projets de la 3ième Commission concernant la tutelle des majeurs et la délivrance de certificats de lois.

Le Président donne acte au Délégué d'Autriche de sa proposition par rapport à la faillite. Il estime que cette proposition est en harmonie avec les vues qni se sont manifestées dans la dernière séance.

M. de Paepe applaudit à la proposition de M. Schumacher. Comme la plupart des Délégués devront s'abstenir du vote et même de la discussion, l'échange de vues sur la faillite se bornerait à un nombre très restreint des membres de la Conférence. Etant d'avis que, sous ces conditions, la discussion n'aurait que peu d'utilité, il ne veut point insister à ce qu'elle soit continuée, quelque vif que soit son désir de voir la matière réglée. L'état actuel des rapports internationaux en matière de faillite n'est ni la justice ni l'égalité, comme M. Rahusen l'a fort justement dit hier. Mais, en présence des déclarations présentées à la Conférence par plusieurs Délégués, il vaut mieux pour le moment ne point prolonger les délibérations.

Le Président serait heureux de voir la Conférence émettre le vœu proposé par M. Schumacher. Il n'est favorable à la continuation de l'échange de vues que pour que le Gouvernement des Pays-Bas, en vue des travaux préparatoires, connaisse autant que possible les opinions des Délégués. Il

voit la difficulté principale du problème dans la décision à prendre sur la question de savoir quelle sera l'autorité compétente. Dans la dernière séance, il a exposé déjà en quelques mots les avantages et les inconvénients des deux systèmes opposés, le système de 1894 qui n'exclut pas la pluralité des faillites, et le système de la 4ième Commission qui empiète tant soit peu sur le terrain des législations internes. La divergence entre les règlements de compétence en matière de faillite d'après les différentes lois paraît trop grande à M. Asser pour qu'il soit déjà possible de faire ce que veut la 4ième Commission et de désigner pour tous les pays d'une manière uniforme l'autorité exclusivement compétente. Pour concilier les deux systèmes opposés il faudrait assurer l'unité de la faillite en même temps que respecter les différences des lois nationales. A cette fin M. Asser propose, d'une manière tout à fait provisoire, de donner à l'article 1 la teneur suivante: „L'autorité compétente pour déclarer la faillite d'un débiteur domicilié dans un des Etats contractants est, quand il s'agit d'un commerçant, celle de son principal établissement: quand il s'agit d'une société commerciale, celle de son siège principal; quand il s'agit d'un non commerçant, celle de son domicile, et quand il s'agit d'une société non commerciale, celle de son siège légal.“ Dans cette rédaction tous les systèmes de compétence se trouvent représentés. A l'article 1 ainsi conçu on devrait alors ajouter un autre article, admettant que la loi indiquée par l'article 1 renvoie à la compétence des autorités d'un autre Etat. Le Président croit que par l'adoption de ce troisième système tous les conflits seront évités, en même temps que les législateurs nationaux resteront plus libres. Il n'ouvrira pas la discussion sur sa proposition, mais il prie les autres Délégués qui auraient eux aussi des propositions à faire de ne pas s'en abstenir.

M. Roguin expose que la Commission, après un examen approfondi. a envisagé qu'il y avait deux questions.

La première est celle de savoir quel doit être le tribunal compétent dans le cas, très rare sauf erreur, où le centre des affaires du débiteur ou d'une société est dans un autre Etat que celui du domicile particulier de ce débiteur ou du siège statutaire de la société. Dans cette hypothèse, la compétence exclusive pour déclarer la faillite doit, d'après la Commission, appartenir à l'autorité de l'Etat où se trouve le siège effectif des affaires.

La deuxième question, de beaucoup la plus grave, est celle de savoir quelle est l'autorité compétente dans le cas où, le centre effectif des affaires se trouvant dans le même pays que le domicile ou le siège statutaire, il existe dans un autre pays un établissement d'affaires secondaire, succursale, filiale, comptoir, etc. Dans cette hypothèse, la Commission estime que la compétence exclusive pour ouvrir la faillite doit appartenir au tribunal de l'Etat dans lequel se trouve le siège principal des affaires économiques du débiteur.

M. Pierantoni ne s'oppose pas à l'examen du troisième système proposé par M. Asser. Son Gouvernement ne lui a pas donnée d'instructions à cet égard et lui a laissé pleine liberté d'action sur tous les points.

Comme l'avant-projet sera remis à la Commission Royale des Pays-Bas qui aura à élaborer le programme pour la 4ième Conférence, il croit utile d'exposer son opinion personnelle qui est contraire aux idées émises par M. le Président Asser.

Il s'en rapporte aux motifs qu'on trouve dans l'Annexe au Rapport de M. Roguin: il est inutile de les répèter à présent. M. Pierantoni n'a demandé la parole que pour faire ressortir l'impossibilité de s'écarter des procédures sur la faillite, en vigueur dans les Etats représentés à la Conférence, dans le but d'imposer une compétence unique.

1° La faillite est d'abord provisoire, puis devient définitive. La faillite provisoire est déclarée soit à la demande du débiteur, qui n'a pas les moyens de payer ses créanciers, soit à la demande de ces derniers, soit enfin d'office par le tribunal. Il y a des lois qui, en vue de cette dernière méthode, obligent les notaires et les huissiers à faire connaître au tribunal dans la première semaine de chaque mois les protestations qu'ils ont faites. Quand les lois des différents pays diffèrent entre elles, comment est-ce que le débiteur et les créanciers peuvent présenter la demande en faillite loin du tribunal local?

2° Un grand nombre de procédures imposent à la justice pénale de faire une enquête pour connaître si la faillite contient des cas de banqueroute. Si la faillite doit être déclarée à l'étranger, comment l'action civile pourra-t-elle être combinée avec l'action criminelle? Les lois pénales sont territoriales; du moment que les documents ayant rapport à la faillite sont remis à un tribunal étranger, l'enquête judiciaire pénale sera tout à fait paralysée.

3° Les partisans de l'unité de la compétence semblent trop oublier la grande difficulté qui résultera de la différence des langues de la différence des systèmes de la tenue des livres et des systèmes de comptabilité.

4° Un grand nombre de lois soumettent le débiteur qui tombe en faillite à une limitation de son habeas corpus: il ne lui est pas permis de s'éloigner de son domicile. Or, si l'un des deux systèmes préconisés par M.M. Roguin, de Paepe et Feith, ou bien celui que M. Asser a suggéré, est adopté, le débiteur devra nécessairement se rendre à l'étranger.

5° Les créanciers et le failli ont le droit de faire opposition quant au jour fixé par le tribunal pour la cessation des payements. On voit d'ici les difficultés qui se présenteront devant les magistrats étrangers pour faire produire devant eux les éléments de preuve sur lesquelles cette opposition est fondée. Et bien grande sera la difficulté pour les parties qui devront se procurer des avocats et des avoués étrangers! Encore, ces jurisconsultes devront examiner à fond les dispositions des lois étrangères.

6° Le jugement qui déclare la faillite prive de plein droit le failli de l'administration de ses biens. Comment faudra-t-il demander l'exécution de cette espèce de jugement?

7° On a le droit de faire opposition à la déclaration définitive de la faillite pour les actes, les opérations du failli, pour tous les payements faits après que la faillite a été déclarée. Les lois sanctionnent la distinction

entre les actes nuls pleno jure et les actes à annuler d'après l'action Pauliana admise dans le Code Civil. Comment est-ce que les intéressés pourront faire valoir ces droits à l'étranger?

8° Il y a nombre d'obligations privilégiées, d'autres assurées par l'inscription hypothécaire. Il n'y a que le tribunal du lieu où se sont formées les obligations qui sera compétent pour en juger, ce qui prouve l'impossibilité de la compétence unique en la faillite.

9° Croit-on que les administrateurs étrangers seront au courant des mœurs, des lois étrangères?

10° Comment est-ce que les créanciers pourront surveiller l'administration? Quelques lois reconnaissent des comités ou délégations des créanciers, mais les créanciers étrangers ne pourront y siéger que s'ils se rendent hors de leur pays.

11° Les juges de paix doivent apposer les scellés sur les biens du failli dans le plus bref délai possible. Comment cet acte de préservation sera-t-il accompli, si la faillite doit être déclarée à l'étranger?

12° De quelle manière se figure-t-on que les inventaires seront rédigés?

13° Quelle sera la procédure pour la vérification des créances?

14° Les lois sur la faillite doivent reconnaître les droits de la femme du failli. Devra-t-elle se porter à l'étranger pour sauvegarder ses droits?

15° Et s'il y a la responsabilité des administrateurs, est-il possible de varier la règle de la compétence locale?

M. Pierantoni fait encore ressortir que même les partisans de l'unité de la compétence ont reconnu l'impossibilité de l'application générale de leur théorie: ils ont été d'accord pour ne pas appliquer les dispositions du projet aux débiteurs et aux sociétés s'occupant de l'exécution d'œuvres publiques. Il faut connaître les dispositions des lois.

Le Délégué d'Italie reste fidèle au système adopté en 1894 qui pourra être revisé et complété. Ce système facilite l'exécution des jugements étrangers soumis à présent à des règles différentes de procédure. C'est l'exécution des jugements étrangers qui est la base la plus nécessaire d'une organisation internationale sur cette matière. Déjà en 1895 le Gouvernement Italien a pris l'initiative pour la réunion d'une Conférence spéciale à ce sujet, et encore dans sa note d'adhésion au projet de programme de la présente Conférence le Ministère des Affaires Etrangères d'Italie a spécialement recommandé la matière.

M. Renault fait la déclaration suivante: La Délégation française s'abstient de tout vote, parce qu'elle ne pouvait avoir d'instructions sur un projet qui n'était pas à l'ordre du jour de la présente Conférence. Elle doit, de plus, faire une réserve même pour l'avenir. Quand nous avons commencé nos travaux, nous ne savions pas exactement de quelle façon seraient utilisées les règles que nous adoptions. Serviraient-elles de direction à nos législateurs respectifs? Serviraient-elles aux diplomates pour des conventions particulières? Ferions-nous des projets de conventions de nature à être acceptés par l'ensemble ou, du moins, une grande partie des Etats représentés? Il y a eu des tâtonnements, comme en témoignent certains

passages des travaux des Conférences de 1893 et de 1894. Les idées se sont précisées. Déjà une Convention est sortie de nos travaux. Nous espérons que d'autres Conventions sortiront de la présente Conférence. C'est en vue de préciser et d'éviter tout malentendu, que je tiens à faire une réserve très nette en ce qui touche le projet sur la faillite. Un tel projet se lie intimement au système de l'exécution des jugements. Je pense que le système, tel qu'il se pratique aujourd'hui, a besoin d'être amélioré, mais qu'il ne peut l'être que par des Conventions d'Etat à Etat, non par une Convention qui comprendrait un certain nombre d'Etats. Le Gouvernement français, à différentes reprises, s'est prononcé à ce sujet; ses idées n'ont pas changé; je n'ai pas manqué de les reproduire chaque fois que l'occasion s'en est présentée. Nous ne serions donc pas disposés à signer une Convention sur les faillites, si bien rédigée qu'on la suppose, du moment qu'elle comprendrait un groupe d'Etats. Nous persistons dans notre résolution de ne conclure en cette matière que des Conventions isolées pour lesquelles nous profiterons naturellement des travaux de la Conférence.

M. Roguin concède qu'on ne peut faire un règlement satisfaisant sur cette matière sans déclarer exécutoires des jugements étrangers; ce qu'a dit M. Renault à cet égard est parfaitement exact, et la Commission l'a compris dès le début de ses travaux. Mais si l'on continue l'examen entamé, il pourra en résulter, soit des conventions entre deux Etats, soit une convention entre trois, quatre, cinq Etats dont la législation serait plus ou moins conforme et dont les relations réciproques permettraient une entente.

M. Renault déclare qu'il n'a pas dit que les travaux de la Conférence sur ce point ne seraient pas utiles. Il a seulement dit que la France ne compte les utiliser que pour conclure des conventions spéciales.

M. Pierantoni dit que c'est là précisément l'idée qu'il a défendue dans le sein de la Commission.

M. de Paepe constate que la Commission dans ses travaux est partie de la pensée qu'un traité en matière de faillite ne pourra être conclu qu'entre des Etats dont les législations à ce sujet sont conformes et qui ont pleine confiance dans leurs tribunaux respectifs. La Commission n'a pas du tout voulu imposer un régime quelconque aux différents Etats.

Sur la proposition du Président, le vœu de M. Schumacher est adopté, sauf rédaction, sans appel nominal, toutefois sous la réserve énoncée par M. Renault.

On procède ensuite à l'examen des propositions de la 1ière Commission concernant

les conflits de lois en matière de mariage.*)

M. van den Bulcke, Vice-Président de la Première Commission, fait la déclaration suivante: Votre 1ière Commission a terminé l'étude des

*) Voir l'annexe à ce Procès-verbal.

articles du Projet de Programme relatifs à l'effet du mariage sur l'état et la capacité de la femme et des enfants, ainsi que sur les biens des époux. Elle a aussi examiné la question de l'effet du divorce sur les biens des époux. Dès le début de ses travaux elle a pu constater que l'élaboration d'un acte final de nature à entraîner l'adhésion de tous serait fort compliquée, et à l'unanimité moins une abstention elle a émis l'avis qu'il ne lui serait guère possible de présenter en temps utile aux délibérations de la Conférence une œuvre suffisamment mûrie pour faire l'objet d'un projet de convention.

Votre Commission fera néanmoins imprimer et distribuer son rapport et ses conclusions. Mais elle se permet de suggérer dès à présent à cette Haute Assemblée l'idée de renvoyer toute la matière à la Commission Royale Néerlandaise pour le droit international privé qui, en tenant compte des diverses législations en présence, pourrait en faire une étude complémentaire et approfondie en vue de la fixation du programme d'une conférence ultérieure.

Le Président donne acte à M. van den Bulcke de sa déclaration. Cependant, puisque cette déclaration se rapporte à la question des effets du mariage sur les biens des époux, il lui semble qu'il vaudrait mieux la réserver jusqu'au moment où on abordera cette matière spéciale.

Le Président ouvre la discussion sur l'avant-projet susmentionné. Il propose de procéder par articles, à moins qu'on ne désire émettre des observations d'un ordre général.

M. de Martens désire faire quelques observations générales.

Les deux Délégués de Russie sont obligés, en vertu de leurs instructions, de faire des réserves expresses et formelles à l'égard de tout le projet qui est soumis à la Conférence, abstraction faite de l'article 1.

Lorsque le Gouvernement des Pays-Bas avait communiqué aux Gouvernements respectifs son Projet de Programme, le Gouvernement russe croyait que ce projet tel qu'il a été élaboré par les Conférences de 1893 et de 1894, et amendé par la Commission Néerlandaise, était de nature à pouvoir servir de base à d'un accord international sur cette matière. Dans cet ordre d'idées le Gouvernement russe, en ce qui concerne les conditions pour la validité du mariage, n'a proposé qu'un seul amendement, touchant notamment l'article 4 ancien, comme il résulte de la missive russe consignée dans le Recueil des Documents relatifs à la Troisième Conférence (page 176).

Mais l'avant-projet qui nous est soumis à présent, constitue, tel qu'il a été remanié par la première Commission, un changement fondamental des projets formulés en 1893 et 1894.

Il est vrai que, comme le dit le Rapporteur dans son rapport, ce changement est le résultat d'une critique pénétrante. Mais M. de Martens pour son compte regrette profondément que cette critique ait abouti à des modifications qu'il trouve fâcheuses pour les pays où le mariage est considéré d'un autre point de vue que dans la plupart des Etats. D'après sa conviction profonde le mariage religieux a les mêmes droits que le mariage civil.

L'avant-projet s'est inspiré d'idées contraires; il est conçu sur la base du mariage civil; le mariage religieux y est presque écarté, n'y est plus traité d'égal. Cependant le respect des lois et droits des Etats étrangers en Russie n'est admissible que sur la base d'une parfaite réciprocité. Personne ne peut exiger qu'on respecte en Russie les lois des Etats étrangers concernant le mariage civil, si ces Etats étrangers ne s'obligent réciproquement de respecter les lois russes relativement au mariage religieux. C'est pour ces motifs qu'en vertu de ses instructions M. de Martens fait des réserves expresses et qu'à son regret il ne pourra prendre part à la discussion en tant qu'elle tend à élaborer un projet propre à faire l'objet d'une Convention entre les Etats. Les Délégués de Russie ne feront aucune proposition et ne provoqueront aucun vote.

Les avis qu'ils émettront, si les circonstances s'y prêteront, ne devront en conséquence être considérés que comme l'expression de l'opinion purement personnelle des Délégués russes, qui ne saurait lier en aucune façon le Gouvernement Impérial.

M. Renault ne désire pas engager une discussion de fond. Il tient cependant à donner quelques explications au sujet des observations que vient de faire M. de Martens.

Le Délégué de Russie a dit que la critique pénétrante à laquelle le Projet de Programme a été soumis, a produit des résultats qu'il déplorait. Cependant la disposition où la question qui le préoccupe était prévue (article 4, al. 2 ancien) n'a pas été modifiée du tout. On a gardé le texte formulé en 1894, qu'on retrouve intact dans l'al. 2 de l'article 5 de l'avant-projet. Ce n'est donc pas la Commission qui a changé de manière de voir depuis 1894.

M. Renault constate en outre que la Commission n'a pas eu du tout l'idée de donner au mariage civil de meilleurs droits qu'au mariage religieux. Il est d'avis, et la Commission partage absolument cette opinion, qu'on ne saurait déduire d'aucune disposition qu'on ait voulu donner la préférence au mariage civil. Le mariage religieux sera tout aussi valable que le mariage civil, comme il résulte d'ailleurs de l'article 5, al. 1. Il reconnaît toutefois qu'il peut y avoir de telles difficultés, quand des lois animées par un esprit fort différent sont en conflit, qu'il est bien malaisé de trouver un terrain où l'on puisse établir un accord commun.

L'article 2er est adopté sans appel nominal. Cette disposition est conçue comme suit:

Le droit de contracter mariage est réglé par la loi nationale de chacun des futurs époux, à moins qu'une disposition de cette loi ne se réfère expressément à une autre loi.

On procède à l'examen de l'article 2:

La loi du lieu de la célébration peut interdire le mariage des étrangers, qui serait contraire à ses dispositions concernant:

1° les degrés de parenté ou d'alliance, pour lesquels il y a une prohibition absolue;

2° la prohibition absolue de se marier, édictée contre les coupables de l'adultère, à raison duquel le mariage de l'un d'eux a été dissous;

3° la prohibition absolue de se marier, édictée contre des personnes condamnées pour avoir de concert attenté à la vie du conjoint de l'une d'elles.

Le mariage célébré contrairement à une des prohibitions mentionnées ci-dessus ne sera pas frappé de nullité, pourvu qu'il soit valable d'après la loi indiquée par l'article 1er.

Sous la réserve de l'application du premier alinéa de l'article 6 de la présente Convention, aucun Etat contractant ne s'oblige à faire célébrer un mariage qui, à raison d'un mariage antérieur ou d'un obstacle d'ordre religieux, serait contraire à ses lois. La violation d'un empêchement de cette nature ne pourrait pas entraîner la nullité du mariage dans les pays autres que celui ou le mariage a été célébré.

M. Roguin dit que les Délégués de Suisse n'ont pas l'intention de discuter les détails de la Convention; ils tiennent seulement à préciser les conséquences qui en résulteront pour les ressortissants des Etats contractants. A propos des divorcés, il croit pouvoir dire qu'il résulte du dernier alinéa de l'article 2 que des personnes régulièrement divorcées en Suisse ne verront pas nécessairement leur divorce reconnu à l'étranger et pourraient n'être pas admises à la célébration d'un nouveau mariage. M. Roguin ne veut pas critiquer ce résultat, il se borne à le constater.

Ce résultat de l'article 2 est en quelque sorte atténué par le renvoi à l'article 6. Le tempérament consiste en la permission de se marier devant un consul ou agent diplomatique de sa nation. Cependant cette atténuation n'est pas pratique pour la Suisse, parce que les consuls suisses, qui ne sont pas des consuls de carrière, n'ont pas le droit de célébrer des mariages. C'est pour ces raisons que la Suisse tient à prendre acte des conséquences de l'article.

M. Renault constate avec M. Roguin l'étendue de la disposition dont il s'agit. Il le constate avec regret, mais fait remarquer que les dispositions adoptées sont le résultat d'une transaction sur laquelle on ne peut revenir.

M. Pierantoni explique le système du Code Italien (article 100 et suivants). La loi reconnaît la validité du mariage des Italiens on d'un Italien avec une étrangère à la condition qu'il ait été célébré dans la forme du pays du lieu et que les Italiens aient rempli les conditions nécessaires pour contracter mariage (articles 55 à 68) selon leur loi nationale. Il lui semble que si la loi du lieu veut interdire la célébration du mariage pour les cas indiqués aux n° 1, 2, 3, on aura l'avantage de restreindre le droit d'annulation.

Il y a une question de droit constitutionnel bien délicate. Est-ce qu'une convention internationale même approuvée par une loi peut forcer le pouvoir législatif d'un pays à faire une loi? Il est à désirer que les Gouvernements étudieront la valeur de l'article. Quant à l'Italie il croit que les cas de prohibition mentionnés répondent aux prohibitions du droit

civil national, et que, par conséquent, le Gouvernement pourra accepter l'article.

M. Renault fait observer que le discours de M. Pierantoni, en tant qu'il s'agit de la législation italienne vise plutôt l'article 4, tandis que ses observations concernant les conditions à remplir par les époux se rattachent à l'article 1er.

L'article 2 appartient à un tout autre ordre d'idées. Il peut très bien se faire qu'il y ait dans les lois du lieu de la célébration des empêchements qui n'existent pas dans la loi nationale. Un amendement a été proposé pour supprimer le mot „absolue" dans le 2°; la Commission a cependant repoussé cet amendement pour le motif indiqué dans le Rapport. M. Renault croit que par la rédaction proposée tous les scrupules sont levés.

M. Pierantoni remercie le Délégué de Francé pour son explication.

M. Missir croit que le texte de l'article 2, tel qu'il a été modifié par la Commission se prêtera à des critiques qu'il faut envisager. L'unité du régime légal concernant le mariage est sacrifié d'après ce texte. Cependant, on ne pouvait faire autrement du moment qu'on a en vue les législations qui considèrent le mariage comme un sacrement religieux. D'après ces lois la célébration religieuse n'est pas une question de forme, mais une condition de validité intrinsèque du mariage, une condition imposée par des considérations de haute moralité. Du premier point de vue elle réclame une application strictement territoriale même aux étrangers qui se trouvent dans le pays, du second elle suit les nationaux même à l'étranger. Avec cette extension la loi donnerait lieu à des conflits inconciliables. La conciliation n'était donc possible qu'avec des sacrifices de part et d'autre.

Les textes proposés par la Commission essaient d'arriver à ce but d'une manière très habile.

Pour les étrangers qui se trouvent dans un pays ayant le mariage religieux, le projet impose à la loi personnelle de futurs époux de s'effacer devant la loi du pays. Quoique capables de contracter mariage selon leur lois, ils doivent respecter les prohibitions d'ordre religieux, sauf a pouvoir contracter mariage devant les autorités diplomatiques et consulaires.

Mais la nullité d'un mariage contracté avec violation des empêchements religieux ne devrait avoir pour les époux que la conséquence qui entraîne la nullité quant à la forme. Comme le mariage nul quant à la forme reste valable partout ailleurs s'il satisfait aux exigences de la loi personnelle des époux (article 7), de même le mariage contracté à l'encontre des prohibitions religieuses n'est nul que dans le pays dont la loi édicte ces prohibitions. Le même système de conciliation a été appliqué en sens inverse dans l'article 3 aux mariages à l'étranger des nationaux appartenant aux pays avec mariage religieux. La loi du pays qui ne reconnaît pas des empêchements d'ordre religieux prévaudra pour rendre possible la célébration du mariage, mais le mariage ainsi contracté pourra être annulé dans les pays ayant le mariage religieux.

L'unité du régime légal du mariage est sacrifiée, il est vrai, mais les conflits trouvent leur conciliation dans des moyens termes, les seuls qui soient possibles.

Le Président remercie M. Missir de l'exposé intéressant qu'on vient d'entendre. Il est convaincu que cet exposé servira beaucoup à éclaircir la portée de l'article pour ceux qui n'ont pas pris part à sa rédaction.

L'article 2 est voté sans appel nominal.

Il en est de même de l'article 3:

La loi du lieu de la célébration peut permettre le mariage des étrangers nonobstant les prohibitions de la loi indiquée par l'article 1er, lorsque ces prohibitions sont exclusivement fondées sur des motifs d'ordre religieux.

Les autres Etats ont le droit de ne pas reconnaître comme valable le mariage célébré dans ces circonstances.

et de l'article 4:

Les étrangers doivent, pour se marier, établir qu'ils remplissent les conditions nécessaires d'après la loi indiquée par l'article 1er.

Cette justification se fera, soit par un certificat des agents diplomatiques ou consulaires du pays des contractants, soit par tout autre mode de preuve, pourvu que les conventions internationales ou les autorités du pays de la célébration reconnaissent la justification comme suffisante.

On aborde l'examen de l'article 5 qui est conçu dans ces termes:

Sera reconnu partout comme valable, quant à la forme, le mariage célébré suivant la loi du pays où il a eu lieu.

Il est toutefois entendu que les pays dont la législation exige une célébration religieuse, pourront ne pas reconnaître comme valables les mariages contractés par leurs nationaux à l'étranger sans que cette prescription ait été observée.

Les dispositions de la loi nationale, en matière de publications, devront être respectées; mais le défaut de ces publications ne pourra pas entraîner la nullité du mariage dans les pays autres que celui dont la loi aurait été violée.

Une copie authentique de l'acte de mariage sera transmise aux autorités du pays de chacun des époux.

M. Pierantoni désire faire une petite observation par rapport aux derniers mots de l'alinéa 3. La loi italienne prescrit que les mariages doivent être enregistrés dans un délai de six mois. Les défauts d'enregistrement n'entraînent pas la nullité. Il serait déraisonnable d'annuler un mariage à défaut des publications. Le Délégué d'Italie demande s'il y aurait de graves inconvénients à supprimer les mots: „dans les pays autres que celui dont la loi aurait été violée".

M. Renault fait remarquer que l'enregistrement dont parle M. Pierantoni et qui existe également en France est une obligation dénuée de sanction, qui n'a pas de rapport avec les publications que vise l'article.

La disposition de l'alinéa 3 est tout à fait indispensable; elle réserve le domaine normal de la législation du pays où le mariage a été célébré et celui de la législation nationale des époux. D'ailleurs la rédaction proposée a autant que possible restreint et concilié les cas dans lequel le mariage pourrait être annulé.

M. Rahusen demande quel est le sens du mot „pourra" dans cet alinéa. S'ensuit-il que l'annulation du marige sera facultative même dans le pays dont la loi aurait été violée?

M. Renault répond affirmativement. D'après la jurisprudence française, un mariage de Français à l'étranger qui n'a pas été précédé de publications en France, n'est pas nécessairement annulé; les tribunaux décident suivant les circonstances de chaque affaire.

M. de Martens profite de la discussion sur l'article 5 pour constater que les réserves que la Délégation de Russie a été obligée de faire n'avaient pas pour but d'amoindrir la valeur du travail de la Commission. Au contraire, M. de Martens et son collègue sont pleins de respect pour ce travail. La Commission a travaillé avec beaucoup de science et d'habileté.

Le Gouvernement Impérial de Russie avait proposé une modification importante qui a donné lieu à une discussion très approfondie au sein de la 1re Commission, mais n'a pas été adoptée. Il se peut que la Conférence ne partage pas la manière de voir de la Commission, mais M. de Martens n'insiste nullement pour que l'amendement russe soit derechef mis aux voix. Il n'a demandé la parole maintenant que pour émettre une idée strictement personnelle. L'article 5 traite de la question de forme du mariage, mais il paraît à M. de Martens que la question de forme est liée d'une manière essentielle avec la question du fond.

Comme on a toujours déclaré que la loi nationale serait le phare à la clarté duquel on se dirigerait, ne pourrait-on pas ajouter au 1er alinéa les mots: „ou suivant la loi nationale?"

M. Pierantoni appelle l'attention de la Conférence sur le second alinéa de l'article. Il respecte le sentiment religieux et constate que, même dans les pays où le mariage a été sécularisé, la bénédiction religieuse est demandée par le plus grand nombre des époux.

Il connaît l'état de la législation russe, qui prescrit les mariages exclusivement religieux, c'est-à-dire confessionnels, mais rappelle les grands inconvénients de ces mariages quand il s'agit de financés qui professent des religions différentes. Il fait remarquer les grandes difficultés auxquelles donna lieu l'application du système du concile de Trente, surtout en Pologne, où il y avait des protestants. Le Saint-Siège donna la permission sous des conditions déterminées: il fallait s'obliger à faire élever les enfants dans l'une des deux religions; quelquefois on exigea que les fils fussent élevés dans la religion du père et les filles dans celle de la mère. Il arriva que la prohibition du mariage provoqua l'apostasie. Tous ces inconvénients obligèrent les législateurs à concilier la liberté de conscience avec la liberté religieuse sous l'empire du mariage civil. En adoptant l'alinéa 2, on créera de grandes difficultés à la célébration des mariages.

Un Russe trouvera-t-il toujours son église à l'étranger? Il semble au Délégué d'Italie qu'il faut s'en remettre à la compétence diplomatique, au droit de chapelle; mais les consuls russes n'auront pas les prêtres autorisés. Il ne fait pas opposition, mais il appellera l'attention de son Gouvernement sur l'alinéa qu'il vote avec réserve.

M. Renault fait remarquer à M. de Martens que les alinéas 1 et 2 de l'article 5 actuel et l'article 4 du projet de 1894 sont identiques.

M. de Martens répète qu'il n'a pas d'instructions à ce sujet. Aussi, il n'a pas fait une proposition, il a seulement suggéré une idée, de laquelle il demande de prendre acte.

M. Heemskerk observe que l'article 7 nouveau donne au moins partiellement satisfaction à l'idée de M. de Martens.

Le premier alinéa est mis aux voix et adopté par treize voix contre une.

Ont voté pour l'alinéa: l'Allemagne, l'Autriche, la Hongrie, la Belgique, le Danemark, la France, l'Italie, des Pays-Bas, le Portugal, la Roumanie, la Suède, la Norvège et la Suisse.

A voté contre: la Russie.

L'alinéa 2 est voté par les treize Etats, ci-dessus énumérés. La Russie s'est abstenue.

L'alinéa 3 est adopté par douze voix contre une et une abstention.

Ont voté pour: l'Allemagne, l'Autriche, la Hongrie, la Belgique, le Danemark, la France, les Pays-Bas, le Portugal, la Roumanie, la Suède, la Norvège et la Suisse.

A voté contre: l'Italie.

S'est abstenue: la Russie.

L'alinéa 5 est adopté sans appel nominal.

On procède à l'examen de l'article 6:

Sera reconnu partout comme valable, quant à la forme, le mariage célébré devant un agent diplomatique ou consulaire, conformément à sa législation, si aucune des parties contractantes n'est ressortissante de l'Etat où le mariage a été célébré et si cet Etat ne s'y oppose pas. Il ne peut pas s'y opposer quand il s'agit d'un mariage, qui, à raison d'un mariage antérieur ou d'un obstacle d'ordre religieux, serait contraire à ses lois.

La réserve du second alinéa de l'article 5 est applicable aux mariages diplomatiques et consulaires.

M. Beichmann rappelle l'amendement proposé par le Danemark et la Norvège.*) Cet amendement n'a pas eu la chance d'être adopté par la Commission. M. Beichmann le regrette, mais ne veut pas revenir sur ce point, parce que les articles 7 et 8 pourront en grande partie obvier à ses appréhensions.

M. Pierantoni émet le vœu que les conventions futures élargissent la compétence des consuls et des agents diplomatiques et permettent la

*) Voir „Documents“ pag. 138 et 179.

célébration des mariages même quand une des parties est ressortissante de l'Etat où est admis le consul ou l'agent diplomatique. Du moment où, par le mariage, la femme devient citoyenne de la patrie du mari, le Délégué d'Italie ne reconnaît pas la raison d'une limitation des compétences traditionnelle.

L'article 6 est adopté.

On procède à l'article 7 qui est ainsi conçu:

Le mariage nul quant à la forme dans le pays où il a été célébré, pourra néanmoins être reconnu comme valable dans les autres pays, si la forme prescrite par la loi nationale de chacune des parties a été observée.

M. Rahusen demande s'il ne conviendrait pas de remplacer les mots: „a été observée" par: „ne s'y oppose pas".

Le cas pourra se présenter qu'un mariage est nul quant à la forme dans le pays où il a été célébré et qu'en même temps la publication des bans prescrits par la loi nationale n'a pas eu lieu. Si la rédaction actuelle est maintenue, il ne sera pas possible de reconnaître ce mariage.

M. Renault fait ressortir que les appréhensions de M. Rahusen ne sont pas motivées; le mariage dont parle le Délégué Néerlandais sera certainement reconnu. Si la loi nationale des époux, tout en prescrivant les bans, ne sanctionne pas cette prescription par l'annulation du mariage, l'omission des bans ne pourra pas être un motif pour ne pas reconnaître du mariage. Il faudra dans tous ces cas consulter la loi nationale. Il est vrai que la rédaction proposée est un peu équivoque, mais toutes les difficultés prendront fin si l'on se tient à l'interprétation indiquée, qui d'ailleurs doit être celle de la Première Commission. La formule proposée par M. Rahusen ne saurait être adoptée; elle est trop négative.

Le Président constate que la Conférence accepte l'interprétation donnée par M. le Délégué de France.

L'article est adopté sans appel nominal.

Il en est de même de l'article 8 qui porte:

La présente Convention ne s'applique qu'aux mariages célébrés sur le territoire des Etats contractants entre personnes dont une au moins est ressortissante d'un de ces Etats.

Aucun Etat ne s'oblige par la présente Convention, à appliquer une loi qui ne serait pas celle d'un Etat contractant.

Le Président constate que le projet a été voté en première lecture. Il sera renvoyé au Comité de Rédaction qui sera également chargé de proposer une rédaction pour les dispositions finales requises pour tous les projets de convention.

La séance est levée à midi et demi.

Le Président:
Asser.

Le Premier Secrétaire:
J. J. Rochussen.

Les Secrétaires:

Beelaerts de Blokland. *T. R. J. E. Stoop.*
C. van Vollenhoven. *H. van Karnebeek.*

Annexe au Procès-verbal n° 7.

Rapport de la première Commission*) sur les dispositions concernant les conflits de loi en matière de mariage. (Conditions de validité.)

La matière qui fait l'objet du présent rapport a déjà été étudiée dans les Conférences de 1893 et de 1894. Le projet de 1893 avait été à peine modifié en 1894. On constatera, au contraire, sur divers points des différences notables entre le projet de 1894 et le projet que nous soumettons à l'examen de la Conférence. Cela s'explique d'abord parce que le programme du Gouvernement Néerlandais a été soumis directement aux divers Gouvernements représentés, qui l'ont fait soigneusement étudier en vue d'un texte à arrêter définitivement. Il faut tenir compte ensuite de ce que la composition de la Commission a été modifiée; les nouveaux membres ont eu l'influence la plus heureuse en soumettant à un critique pénétrante les textes précédemment adoptés, en faisant apparaître des difficultés d'interprétation auxquelles leurs devanciers n'avaient pas songé, parce que, comme cela arrive souvent, ils avaient eu en vue plutôt ce qu'ils voulaient dire que ce qu'ils disaient réellement.

En outre, l'augmentation du nombre des membres de la Commission a eu cette conséquence également avantageuse que les principaux systèmes législatifs sur la matière ont été représentés. Il est à supposer que la Commission a pu prévoir le plus grand nombre des difficultés que la divergence des législations en cette matière est de nature à faire naître et, en même temps, se rendre compte de la gravité relative de ces difficultés. Théoriquement un jurisconsulte peut bien faire une revue des conflits possibles et proposer des règles pour leur solution. Mais il ne peut suffisamment apprécier la portée des dispositions dont il constate le texte, en ce sens que la notion d'ordre public est essentiellement subjective. Nous pouvons trouver, par exemple, des empêchements du même genre dans deux pays, sans que ces deux pays les envisagent de la même façon, y attachent la même importance. Un pays acceptera facilement de ne pas les imposer aux étrangers, tandis que l'autre réputera scandaleuse la violation de ces empêchements qui serait commise par qui que ce soit. Nous espérons être parvenus à nous rendre assez exactement compte des exigences des principales législations en matière de mariage, parce que nous n'avions pas seulement leurs textes sous les yeux, mais que nous avions parmi nous des interprètes autorisés de leurs dispositions.

Nous avons fait les plus grands efforts pour arriver à poser des règles qui fussent acceptables pour les Etats dont les législations ne sont pas

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*) Cette Commission était composée de MM. Renault, Délégué de France, Président et Rapporteur; Kriege, Délégué d'Allemagne; van den Bulcke, Délégué de Belgique; Oliver y Esteller, Délégué d'Espagne; Lainé, Délégué de France; Töry, Délégué de Hongrie; Heemskerk, Délégué des Pays-Bas; Goussakowsky, Délégué de Russie; de Hammarskjöld, Délégué de Suède; Melli, Délégué de Suisse. Le comte de Selir Délégué de Portugal, a régulièrement pris part aux travaux de la Commission.

séparées par des différences trop essentielles. Notre projet est une œuvre de transaction, ce qui fait qu'il peut être facilement critiqué, si on se place, soit au point de vue scientifique, soit au point de vue d'un pays déterminé. Le théoricien trouvera que les principes posés comportent de trop graves exceptions ou restrictions, qu'il y a des inconséquences un peu singulières; le jurisconsulte de tel pays estimera que les dispositions de sa législation ont été trop facilement écartées au profit d'une loi étrangère. Nous nous sommes placés sur un terrain tout pratique. Les cas où des individus se marient dans un pays qui n'est pas le leur, deviennent de plus en plus fréquents; nous avons voulu réduire dans la plus forte mesure les difficultés qui naissent de cette situation, diminuer surtout les tristes conflits qui se produisent quand un mariage, regardé comme valable dans un pays, est déclaré nul dans un autre, au grand détriment de personnes innocentes et de la morale publique. Nous avons demandé aux diverses législations les sacrifices nécessaires pour que ce résultat fût obtenu. Dans certains cas il n'a pu l'être que partiellement et nous avons dû constater nous-mêmes qu'un mariage pourrait être envisagé de façon différente dans le pays où il aurait été célébré et dans le pays d'origine des époux. Cela est certainement fâcheux; mais la Conférence estimera peut-être que c'était inévitable. Malgré le désir que l'on peut avoir de donner effet à une loi étrangère, il y a une limite qui ne peut être dépassée. Si un législateur, dans un cas donné, prescrit à ses juges de tenir compte d'une législation étrangère pour le règlement d'un rapport de droit, ce n'est pas, comme on l'a pensé et dit trop longtemps, par courtoisie ou tolérance, c'est parce qu'il pense que dans l'intérêt d'une bonne administration de la justice, cette législation étrangère convient le mieux pour le règlement du rapport de droit dont il s'agit. Il s'approprie cette législation, il la fait sienne. Mais cela n'est évidemment possible qu'autant qu'il n'y a pas contradiction absolue entre les deux législations. Un Etat ne peut adopter, même dans une mesure restreinte, une règle qui est la négation des principes essentiels de sa législation. Dans certains cas, il doit dire un non possumus. Cela n'implique en rien qu'il porte un jugement défavorable sur la disposition qu'il refuse de laisser appliquer sur son territoire. Cela veut dire seulement que les deux lois sont inspirées par des principes opposés, parce qu' elles répondent à des sentiments et à des besoins tout différents. C'est en ce sens que, dans la première Conférence, M. de Korizmics, sans contester, au point de vue doctrinal, les règles proposées par la Commission du mariage, avait déclaré*) que ces règles ne pourraient être acceptées par la Hongrie à raison de l'état actuel de sa législation sur le mariage. Cette législation, pour la plus grande partie des pays de la Couronne hongroise, ayant changé, une entente a pu intervenir.

Ce Rapport aura surtout pour but d'indiquer en quoi les nouvelles propositions diffèrent de celles qu'avait adoptées la Conférence de 1894 et de motiver les changements que nous demandons à la Conférence d'accepter.

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*) Séance du 22 septembre 1893, Actes 1893. I partie, p. 39—40.

Article 1.

Le droit de contracter mariage est réglé par la loi nationale de chacun des futurs époux, à moins qu'une disposition de cette loi ne se réfère expressément à une autre loi.

Si on compare cette disposition à l'article 1 du Projet de Programme, on constate d'abord que la seconde phrase de ce dernier article a été supprimée comme étant une explication inutile de la première. En outre, la formule de la règle a été légèrement modifiée sur deux points. D'une part, on a évité l'emploi du mot loi nationale, dans le double sens de „loi réglant les conditions du mariage" et de „loi réglant les conflits entre les législations"; quand il est parlé d'une disposition de cette loi, c'est la disposition sur les conflits (ce que les Allemands appellent Collisionsnorm) que renferme la loi nationale, qui est visée. D'autre part, la nouvelle rédaction est formulée de manière à ne laisser subsister aucune équivoque au sujet de la portée du Renvoi. On suppose que, dans la législation nationale des futurs époux, une clause relative au conflit des lois prescrit que le statut personnel est réglé par la loi du domicile et on se demande communément si la règle du renvoi est facultative ou obligatoire, si la loi du domicile doit être forcément appliquée ou s'il y a un choix entre cette loi et la loi nationale. En admettant que la question se pose sérieusement, it faut dire qu'elle est résolue par la loi nationale elle-même, en ce sens que celle-ci décide si elle entend donner une simple faculté de se soumettre à la loi du domicile, ou, au contraire, créer une obligation de le faire. Par exemple, dans la loi fédérale suisse 24 décembre 1874 sur l'état civil, le but de l'article 25, al. 3 *), n'est pas douteux. Il est de faire qu'un mariage soit le moins possible annulé. S'il est valable, soit d'après la loi nationale, soit d'après la loi du domicile, soit d'après la loi du lieu de célébration, cela semble suffisant au législateur suisse: mieux vaut se contenter des garanties offertes par l'une ou l'autre de ces lois qu'annuler un mariage, parce que les prescriptions d'une loi déterminée d'une manière absolue n'auraient pas été observées. La législation danoise décide que le statut personnel est déterminé par le domicile. En ce qui touche les Danois établis à l'étranger, cela signifie certainement que leur mariage sera valable en Danemark, s'il a été conclu en observant les conditions de capacité prescrites par la loi du domicile. Maintenant, si on suppose que les conditions de la loi du domicile ont été méconnues et que les conditions de la loi danoise ont été observées, est-il à croire qu'en Danemark on annulerait un parail mariage et qu'ainsi on punirait des Danois pour s'être fidèlement à l'étranger conformés aux lois de leur patrie? Cela nous semblerait un peu extraordinaire, surtout si, au lieu de la célébration, la loi réglait la condition des époux d'après leur loi nationale, et c'est pour cela que nous pensons qu'il n'existe guère de loi ayant un renvoi obligatoire

*) „Sera reconnu comme valable dans toute la Confédération le mariage conclu dans les cautions ou á l'étranger. conformément à la législation qui y est en vigueur."

dans le sens que l'on donne ordinairement à cette expression. Dans les cas d'étrangers dont la loi nationale ne connaît pas le renvoi en ce qui touche ses nationaux, par exemple, d'Allemands, de Français ou d'Italiens qui se marieraient dans un pays comme le Danemark, leur loi nationale sur les conditions du mariage devrait naturellement leur être seule appliquée, sous les tempéraments admis par les articles 2 et 3.

Comme, dans le pays où des étrangers veulent se marier, il peut y avoir incertitude sur le point de savoir si la loi nationale renvoie ou non à une autre loi, il convient qu'il y ait dans cette loi une disposition expresse à ce sujet; c'est le cas de la loi suisse de 1874. On a fait remarquer que cette disposition expresse faisait quelquefois défaut et qu'ainsi la portée de l'article serait trop restreinte. Il n'y pas de clause légale spéciale en Norvège et en Danemark. Dans ces deux pays, la législation règle la condition des étrangers qui y sont établis, mais ne dit rien au sujet des Norvégiens ou des Danois qui sont établis à l'étranger; c'est par analogie que la règle du domicile, posée pour les étrangers dans le pays, est étendue aux sujets établis au dehors. Il ne leur est pas difficile d'édicter une loi pour régler expressément la condition de leurs nationaux à l'étranger; ils écarteront ainsi toute incertitude.

Il n'est pas besoin d'insister pour motiver le rejet d'amendements consistant à mentionner la capacité de contracter mariage au lieu du droit de contracter mariage ou à dire: la validité du mariage est réglée. L'expression: droit de contracter mariage a paru meilleure, parce qu'elle est plus compréhensive; ce qui concerne les vices du consentement (erreur, dol, violence) rentre dans le droit de contracter mariage et non dans la capacité. La validité est examinée à propos d'un mariage célébré, tandis qu'il s'agit ici des conditions à remplir pour contracter mariage.

Il n'y a pas lieu non plus de revenir sur la règle du Renvoi ses avantages et ses inconvénients. Les membres de la Commission qui condamnent cette règle en général, pensent que, si elle est acceptable dans un cas, c'est bien dans celui qui nous occupe, parce qu'avec l'application qu'elle recevra vraisemblablement, le résultat est de diminuer les cas de nullité du mariage.

Il reste à mentionner deux amendements présentés au nom du Ministère Royal Hongrois de la Justice.

Le premier, inspiré par la loi hongroise de 1894, était ainsi formulé: „la validité du mariage est réglée, en ce qui concerne l'âge requis pour la célébration du mariage et le consentement nécessaire des parents ou tuteurs, par la loi nationale de chacun des futurs époux: en ce qui concerne les autres conditions, par les lois nationales de tous les deux futurs époux.“

Le motif donné par M. Töry dans une note spéciale est que, le mariage étant un acte bilatéral, sa validité n'est incontestable que s'il est conforme aux lois nationales des deux futurs époux et pas seulement à la loi respective de chacun d'eux. Comme le reconnaît la proposition elle-même, les conditions relatives à l'âge, au consentement des parents ou

tuteurs, doivent être examinées pour chaque époux d'après sa législation exclusivement; du moment qu'un des futurs époux a l'âge fixé par sa loi, peu importe qu'il n'ait pas l'âge fixé par la loi de l'autre futur époux. En sens inverse, pour les impêchements tenant à la parenté, il n'y a pas de difficulté non plus. D'après la loi du futur époux, un oncle ne peut épouser sa nièce; il sera empêché de faire ce mariage, quand même, d'après la loi de la nièce, le mariage serait possible. L'hypothèse indiquée principalement par M. Töry pour justifier la nécessité de sa proposition est la suivante: un prêtre catholique, sujet d'un Etat dont la loi ne connaît pas d'empêchements fondés sur la qualité de prêtre, veut épouser une femme dont la loi contient un empêchements de ce genre; par exemple, un prêtre catholique allemand veut épouser une Autrichienne en Allemagne. On peut se demander si vraiment un pareil mariage serait empêché par l'amendement proposé. En effet, le prêtre est capable de se marier; la femme autrichienne l'est aussi, la règle de la loi autrichienne l'est aussi, la règle de la loi autrichienne n'étant pas qu'une Autrichienne ne peut épouser un prêtre, mais qu'un prêtre autrichien ne peut se marier, ce qui est bien différent. Du reste, l'Autriche pourrait atteindre son but en créant un empêchement relatif à la charge d'Autrichienne. Dans tous les cas, il n'y a pas lieu de faire une disposition visant un cas aussi spécial.

L'autre proposition, également inspirée par la loi hongroise de 1894, porte que la loi du lieu de la célébration peut établir que la validité du mariage d'une étrangère avec un fiancé ressortissant du pays où le mariage est célébré, est réglée par la loi nationale du fiancé seul, sauf en ce qui concerne l'âge de la fiancée requis pour la célébration du mariage et le consentement nécessaire pour elle de ses parents, tuteurs ou curateurs."

La Commission a pensé qu'avant le mariage, il n'y avait pas de raison pour que la loi du fiancé prévalût sur celle de la fiancée. Chacun des futurs doit être capable d'après sa loi. L'incapacité qui existerait dans la personne de la fiancée d'après sa loi nationale, ne peut être effacée, parce que cette incapacité n'existerait pas dans la loi nationale du fiancé. La législation hongroise qui, dans le cas précédent, paraissait particulièrement stricte en exigeant la combinaison des deux lois, semble ici accorder une trop grande facilité au mariage.

Si on s'en était tenu au principe de l'article 1er, les conséquences suivantes se seraient produites:

1° Les étrangers, capables de se marier d'après leur loi nationale, doivent pouvoir se marier dans un pays, quand même ils seraient incapables d'après la loi de ce pays.

2° Les étrangers, incapables de se marier d'après leur loi nationale, ne doivent pas pouvoir se marier dans un pays, quand même ils seraient capables d'après la loi de ce pays.

Ces deux conséquences logiques n'ont pas pu être acceptées dans toute leur rigueur, parce qu'elles se heurteraient à des principes regardés comme essentiels dans le pays de la célébration. La difficulté consiste à préciser les cas dans lesquels de tels principes s'opposent à ce que les conséquences

indiquées se produisent. Elle a longuement occupé la Commission qui est arrivée, non sans peine, à formuler, dans l'article 2, les restrictions que comporte la première conséquence et, dans l'article 3, celles que comporte la seconde.

Article 2.

La loi du lieu de la célébration peut interdire le mariage des étrangers, qui serait contraire à ses dispositions concernant:

1° les degrés de parenté ou d'alliance, pour lesquels il y a une prohibition absolue;

2° la prohibition absolue de se marier, édictée contre les coupables de l'adultère, à raison duquel le mariage de l'un d'eux a été dissous;

3° la prohibition absolue de se marier, édictée contre des personnes condamnées pour avoir de concert attenté à la vie du conjoint de l'une d'elles.

Le mariage célébré contrairement à une des prohibitions mentionnées ci-dessus ne sera pas frappé de nullité, pourvu qu'il soit valable d'après la loi indiquée par l'article 1er.

Sous la réserve de l'application du premier alinéa de l'article 6 de la présente Convention, aucun Etat contractant ne s'oblige à faire célébrer un mariage qui, à raison d'un mariage antérieur ou d'un obstacle d'ordre religieux, serait contraire à ses lois. La violation d'un empêchement de cette nature ne pourra pas entraîner la nullité du mariage dans les pays autres que celui où le mariage a été célébré.

Cet article diffère de l'article correspondant du Projet de Programme en ce qu'un cas a été supprimé et un autre a été ajouté à ceux où la loi du pays de la célébration peut interdire le mariage; de plus deux dispositions toutes nouvelles ont été introduites.

Tous les membres de la Commission ont admis que le pays où il s'agissait de célébrer un mariage ne pouvait être contraint de laisser procéder à cette célébration par cela seul que le mariage était possible d'après la loi nationale des futurs époux; un tel mariage serait, dans certains cas, de nature à constituer un véritable scandale dans le pays. L'accord n'est pas aussi unanime quand il s'agit d'arrêter une prescription en ce sens. Formulera-t-on une régle générale ou indiquera-t-on les divers cas d'application? Dans cette dernière alternative, quels seront ces cas?

Plusieurs amendements (Danemark, Norvège) proposaient de réserver à chaque pays la faculté d'interdire la célébration du mariage d'un étranger domicilié dans le pays, lorsque les conditions prescrites, soit par le droit public du pays, soit par ses lois visant à protéger les droits d'une partie tierce, ne sont pas remplies. D'une façon générale, la Commission a écarté les formules visant le droit public ou l'ordre public, à raison du vague de ces expressions et de l'incertitude qui en résulte dans les décisions. M. le Délégué d'Allemagne a particulièrement insisté en ce sens. Pour le même motif, la Commission a écarté un amendement de M. le Délégué d'Espagne ainsi rédigé: „la loi du lieu de la célébration peut interdire le mariage des étrangers qui serait contraire à ses dispositions dont l'in-

fraction est sanctionnée par la nullité absolue de l'acte." Cet amendement avait bien l'avantage de supprimer l'incertitude dans les pays de la célébration, puisqu'il n'y aurait qu'à consulter la législation de ce pays pour savoir quels empêchements y sont sanctionnés par la nullité absolue. Mais les autres pays ne savent pas quelle portée aurait une pareille prescription. L'esprit de notre travail est de diminuer l'arbitaire dans les rapports internationaux en cette matière. Il convient de déterminer avec le plus de précision possible les cas dans lesquels la loi nationale ne sera pas observée.

Le point de départ admis par le Projet de Programme est donc maintenu. Une modification de rédaction était proposée par M. le Délégué de Belgique en ce sens qu'on aurait dit: Seront également applicables aux mariages des étrangers les dispositions de la loi du lieu de célébration concernant . . . . ." La Commission a pensé qu'il n'y avait pas besoin de déclarer ces dispositions de plein droit applicables aux étrangers, qu'il suffisait de permettre au pays de la célébration de les appliquer; si ce pays est moins susceptible pour les étrangers que pour ses nationaux, s'il veut laisser les premiers se marier dans les conditions où les seconds ne pourraient le faire, il n'y a aucun motif de l'en empêcher. En fait, il est vraisemblable que les prohibitions énumérées seront, dans un pays qui les admettrait, étendues à tous les mariages.

Le premier cas prévu par le Projet de Programme était celui de la nécessité de la dissolution d'un mariage antérieur. Une explication est à peine nécessaire, avait dit la Commission de 1893 „Le droit public de la plupart des pays s'oppose évidemment à ce que la polygamie puisse être pratiquée, alors même qu'elle serait admise par la loi à laquelle appartenaient les futurs époux." Telle paraissant être la seule portée de la disposition, ne convenait-il pas de la supprimer comme visant une hypothèse chimérique? Les Etats contractants n'admettent pas la polygamie et un article exprès de notre projet (art, 8, al. 2) dispose qu'aucun Etat ne sera obligé d'appliquer une loi qui ne serait pas celle d'un Etat contractant. Aussi ce premier cas a-t-il été supprimé par la Commission.

Le second cas qui est devenu le premier, a été maintenu sans difficulté. Un amendement belge proposait d'ajouter au 2° une restriction en ces termes: „sauf les cas de décès ou de nouveau mariage du conjoint au profit duquel le divorce a été prononcé." Cet amendement a été retiré après un échange d'observations qui a fait ressortir des difficultés d'application.

La proposition du Délégué de Suède de supprimer le mot absolue en ce qui concerne la même prohibition, a été repoussée comme tendant à établir une distinction non justifiée entre le 1° et le 2°.

Le 3° a été ajouté sur la proposition de la Hongrie qui n'a pas rencontré d'objection; il y a un argument a fortiori tiré de l'admission du 2°.

Le Danemark, la Norvège et la Suède demandaient que l'on visât „l'obligation imposée à la personne veuve ou divorcée de procéder, avant de se remarier, au partage des biens de la communauté provenant du mariage antérieur." Cette obligation a pour but de protéger les intérêts

des tiers, notamment des enfants, qui peuvent être compromis par le nouveau mariage contracté avant que la liquidation n'ait été faite. Cela a semblé être trop spécial, viser un cas tout particulier d'indivision; et aussi la Commission n'a pas voulu introduire un nouvel obstacle au mariage.

L'Autriche demandait qu'on ajoutât deux autres cas; l'un concernait l'interdiction absolue de se marier imposée à un ecclésiastique engagé dans les ordres supérieurs ou à une personne ayant fait le vœu solennel de célibat; l'autre était relatif à la prohibition absolue du mariage entre chrétiens et non chrétiens. La majorité de la Commission comprenait la répugnance que pouvait éprouver un Etat à laisser célébrer sur son territoire un mariage contraire à ces prohibitions qui lui paraissent dictées par les exigences du sentiment religieux; d'autre part, cependant, elle ne pouvait se borner à constater que les étrangers seraient, conformément à une convention internationale, privés de la faculté de se marier là où ils sont établis, alors qu'ils sont en règle avec leur loi nationale et que l'obstacle local vient de considérations rejetées dans la plupart des Etats représentés. Comment concilier ces deux choses? Cela paraissait difficile. Le résultat a cependant été obtenu grâce à un système ingénieux présenté à la Commission par l'éminent Président de la Conférence. M. Asser a proposé de dire qu'aucun Etat contractant ne s'oblige à faire célébrer un mariage à l'égard duquel, à raison d'un obstacle d'ordre religieux, il n'y a pas sur son territoire d'autorité nationale compétente. En Autriche, il n'y a pas d'autorité nationale compétente pour célébrer le mariage d'un prêtre catholique ou le mariage d'un Catholique et d'une Israélite. Du moment qu'il ne s'agit pas de marier des sujets autrichiens et de faire intervenir des autorités autrichiennes, ecclésiastiques ou autres, l'Autriche peut laisser célébrer de pareils mariages sur son territoire, ce qui pourra se faire par l'intermédiaire des agents diplomatiques et consulaires. De cette façon, les exigences des souverainetés respectives sont satisfaites dans la mesure du possible. L'Etat d'origine veille aux intérêts de ses nationaux en leur procurant par ses agents le moyen de se marier; l'Etat où est célébré le mariage ne coopère pas à un acte qui lui répugne. Il y a entre les deux idées un lien intime que constate le renvoi fait par le dernier alinéa de l'article 2 à l'alinéa 1 de l'article 6 et que confirme de nouveau cet article 6.

M. le Délégué à l'Autriche a bien voulu déclarer qu'à raison de l'adoption de l'amendement de M. Asser, il retirait sa proposition d'ajouter deux cas à l'énumération de l'article 2.

L'amendement de M. Asser a été complété pour tenir compte d'un ordre d'idées analogue qui intéresse l'Autriche et les pays qui, n'ayant que le mariage religieux, n'admettent pas le divorce pour certaines catégories de personnes. Par exemple, un divorce a eu lieu en France et en Allemagne de la manière la plus régulière; peu importent la nationalité et la religion des époux. L'un des conjoints divorcés veut se marier en Espagne; l'autorité espagnole ne le lui permettra peut-être pas, parce qu'elle ne considère pas le mariage au sujet duquel un divorce est intervenu comme

suffisamment dissous au point de vue d'un nouveau mariage. C'est en ce sens qu'on aurait pu entendre à la rigueur la disposition du 1° de l'ancien article 2 relative à la nécessité de la dissolution d'un mariage antérieur, disposition supprimée comme il a été expliqué plus haut. En Autriche, on reconnaît bien le divorce prononcé à l'étranger ainsi que le divorce prononcé en Autriche entre des non Catholiques; mais le conjoint divorcé ne peut épouser une Catholique. L'Autriche croit ne pas pouvoir laisser faire un tel mariage par ses autorités, mais, par analogie de ce qui a été dit pour les empêchements d'ordre religieux, elle consent à ce que les agents diplomatiques et consulaires y procèdent. La nouvelle rédaction comprend donc les cas où il n'y a pas d'autorité nationale compétente à raison d'un mariage antérieur ou d'un obstacle d'ordre religieux. La rédaction de l'amendement de M. Asser a finalement été modifiée de la manière indiquée dans le texte soumis à la Conférence. La Commission a donné satisfaction à une demande de M. le Délégué d'Autriche qui a signalé des difficultés que pouvait soulever la formule mentionnant l'incompétence d'une autorité nationale. On ne voit pas avec assez de netteté la distinction entre le cas où une autorité est incompétente pour célébrer un mariage et celui où elle est bien compétente pour un mariage, mais ne doit pas le célébrer, parce qu'il y a un empêchement. La nouvelle rédaction est certainement plus simple et plus claire. — On peut supposer qu'un mariage a été, par erreur, célébré au mépris d'un obstacle de cette nature. Quel en sera le sort? Plusieurs membres de la Commission voulaient qu'on appliquât en ce cas la règle posée par l'avant-dernier alinéa de article 2 telle qu'elle est expliquée ci-après, en faisant remarquer que les empêchements des n°s 1, 2 et 3 semblent plus graves, puisqu' ils doivent être respectés par les agents diplomatiques et consulaires, tandis qu'un Etat ne peut s'opposer à ce que ses agents célèbrent les mariages à l'égard desquels existent les obstacles dont il est question dans le dernier alinéa de l'article 2. Comment des empêchements moins graves seraient-ils sanctionnés plus sévèrement? Cependant, sur l'insistance de M. le Délégué d'Autriche, la majorité de la Commission a consenti à ce que l'on se bornât à dire que le mariage, en pareil cas, ne pourrait être annulé que dans le pays où il a été célébré et dont la loi a été violée. — Ce n'est pas avec empressement qu'une pareille disposition a été acceptée par la majorité des membres de la Commission; il a fallu qu'ils fussent bien convaincus que la concession était nécessaire pour obtenir l'adhésion de plusieurs Etats. Ils espèrent qu'un moment viendra où chaque Etat acceptera sur son territoire les conséquences d'un fait qui s'est régulièrement accompli sur un territoire étranger, surtout quand ce fait ne concerne pas ses nationaux. En attendant, ils reçoivent partiellement satisfaction en obtenant que ces mariages puissent être célébrés par des agents diplomatiques ou consulaires, même dans les pays où l'intervention de ces agents n'est pas admise de droit commun.

Il reste à expliquer dans l'article 2 une disposition toute nouvelle, celle de l'avant-dernier alinéa de l'article 2. Elle prévoit l'hypothèse suivante:

un mariage a été célébré dans un pays contrairement à une prohibition édictée par la loi de ces pays et rentrant dans les cas mentionnés par l'article 2, 1°, 2° et 3; la loi nationale n'a pas été méconnue. Quelle est la sanction du manquement à la loi locale? L'ancien article 2 ne s'expliquait pas à ce sujet et la discussion était possible. La situation est en effet complexe. La validité peut être examinée au point de vue du pays de la célébration, à celui du pays d'origine, enfin à celui des pays tiers. En l'absence d'un texte exprès, il est tout naturel que les sanctions ordinaires de la loi du pays de la célébration s'appliquent à ce mariage contracté là où elle commande. Quant au pays d'origine, il ne peut annuler un pareil mariage qui n'est en rien contraire à sa loi. Les pays tiers n'ont aucune raison décisive pour annuler ce mariage qui serait valable pour eux, s'il avait été célébré dans le pays d'origine des époux. La situation n'est pas à leur égard sensiblement différente, parce que le mariage a été célébré dans un autre pays. Pour tenir compte de ces considérations, l'Allemagne proposait d'ajouter à l'énumération de l'article 2 un amendement ainsi conçu: „Si le mariage a été conclu malgré une prohibition de cette nature, les autres Etats auront néanmoins la faculté de le reconnaître comme valable.“ L'Autriche a insisté pour que le mariage pût être déclaré nul dans le pays où il avait été célébré. Après discussion, il a semblé à la Commission qu'il convenait d'aller bien au-delà de l'amendement. D'abord, pour les pays autres que le pays de la célébration, il n'y a pas de raison sérieuse pour prononcer la nullité du mariage, puisque leur loi n'a pas été violée. Dès lors, pourquoi se contenter de leur laisser la faculté de reconnaître le mariage comme valable et ne pas déclarer positivement que le mariage est valable. Il y a tout avantage à laisser subsister le moins possible d'arbitraire en pareille matière. Cela étant, ne faut-il pas faire un pas de plus et dire que, malgré l'irrégularité commise, le mariage sela reconnu partout comme valable. C'est ce que la Commission propose à la Conférence de décider. Au nom de l'intérêt général, on demande au pays de la célébration de ne considérer que comme prohibitifs les empêchements énumérés, en supposant, bien entendu, que les époux n'aient pas contrevenu à leur loi personnelle.

Article 3.

La loi du lieu de la célébration peut permettre le mariage des étrangers nonobstant les prohibitions de la loi indiquée par l'article 1er, lorsque ces prohibitions sont exclusivement fondées sur des motifs d'ordre religieux.

Les autres Etats ont le droit de ne pas reconnaître comme valable le mariage célébré dans ces circonstances.

La disposition est toute nouvelle; si elle a fini par être acceptée par la grande majorité de la Commission, ce n'est qu' à la suite d'une discussion prolongée. La Conférence de 1893 était partie d'une idée ainsi formulée dans son Rapport dont les termes ont été malicieusement rappelés au Rapporteur de 1900: „La règle générale, admise d'une manière absolue par la Commission, est que du moment où une personne ne peut

contracter mariage d'après sa loi d'origine, elle ne doit pas pouvoir le faire dans un autre pays, quelle que soit la nature de l'empêchement. Il n'a pas semblé que l'ordre public d'un pays exigeât nécessairement qu'on donnât, en vertu de la loi de ce pays, la faculté de se marier à des individus qui ne l'ont pas d'après leur loi nationale. Il n'y a pas alors de raison suffisante pour ne pas laisser plein effet à cette loi.“ Dans la séance de la Conférence du 22 septembre 1893, le baron d'Anethan avait, au nom de la Délégation belge, fait une réserve au sujet des objections constitutionnelles que pourraient éventuellement soulever les conditions résultant de la loi nationale des deux époux. On s'en était tenu là et la question n'est pas revenue en 1894. Mais, cette fois, elle a été nettement posée par deux amendements analogues de la Belgique et de la France: „les prohibitions édictées par la loi nationale ne seront pas applicables si, d'après la loi du lieu de la célébration du mariage, elles sont considérées comme contraires à l'ordre public.“ „Les prohibitions établies par la loi des époux et contraires au droit public du pays de la célébration n'y empêcheront pas le mariage.“

Les Délégués de Belgique et de Suisse ont spécialement fait valoir que l'observation de certaines prohibitions établies par des lois étrangères serait incompatible avec des prescriptions de leurs Constitutions qui, par exemple, n'admettent pas qu'il y ait des distinctions tirées de la religion des individus. Le droit public du pays serait méconnu sur un point essentiel, si un mariage était empêché à raison simplement d'une différence de religion des futurs époux. Si, en France, il n'y a pas de disposition constitutionnelle expresse comme en Belgique et en Suisse, le principe de la sécularisation de l'état civil et celui de la liberté de conscience sont assez nettement établis pour qu'on puisse affirmer que l'opinion publique n'admettrait pas qu'on refusât à deux personnes de les marier par le motif, que l'une est catholique et l'autre israélite. Si on tient compte de l'ordre public du pays de la célébration en tant qu'il s'agit d'empêcher un mariage quoiqu'il soit conforme à la loi nationale, pourquoi n'en pas tenir compte en tant qu'il s'agit de laisser célébrer un mariage qui serait contraire à la loi nationale. On a, il est vrai, fait justement remarquer qu'il n'y avait pas d'identité entre les deux points de vue. Il est plus grave de prêter le concours des agents de l'Etat à un acte que l'on réprouve, que d'empêcher simplement un acte de se produire sur le territoire. Par conséquent, sans se mettre en contradiction avec lui-même, un pays peut, d'une part, ne pas s'obliger à faire célébrer un mariage contraire à ses convictions, (cette latitude lui est réservée par l'article 2), et ne pas permettre de violer directement la loi nationale qu'il faut respecter dans la mesure du possible. Nous connaissons les Etats avec lesquels nous nous proposons de contracter, a dit le Délégué d'Allemagne, nous sommes en bonne société. Nous pouvons nous obliger à faire respecter tous les empêchements admis par les lois de nos associés. Si l'Allemagne pouvait le faire, d'autres Etats n'avaient pas cette liberté, sans que leur attitude impliquât un blâme à l'égard de la législation d'autres Etats, et il y a

seulement constatation de sentiments tout à fait opposés qui peuvent également s'expliquer par des considérations sociales, politiques, religieuses. De ce que deux règles sont absolument contraires, cela ne veut pas forcément dire que l'une est bonne et que l'autre est mauvaise; chacune peut exactement convenir au milieu pour lequel elle est faite. Voilà ce qu'il ne faut jamais perdre de vue dans la comparaison que l'on fait des diverses législations.

Ce que M. le Délégué d'Allemagne critiquait surtout dans les amendements de la France et de la Belgique, c'était le caractère vague de la notion d'ordre public ou de droit public, qui peut être appréciée par les juges très différemment suivant les temps et les pays. Il résulte de là une très grande incertitude. Un pays ne peut savoir à l'avance dans quelle mesure ses nationaux seront obligés à l'étranger de respecter les empêchements de mariage qu'il a considérés comme nécessaires. A cette incertitude s'en joint une autre, encore plus grave, sur le sort du mariage qui serait célébré dans ces circonstances. Il sera reconnu comme valable dans le pays de la célébration, cela va sans dire. Il sera certainement tenu pour nul dans le pays d'origine, auquel on ne peut imposer d'admettre comme une chose régulière la violation de ses lois. Qu'est-ce que sera le mariage dans les pays tiers?

Satisfaction a été donnée à la juste préoccupation de M. le Délégué d'Allemagne en ce qu'à la notion trop abstraite et trop vague de droit public et d'ordre public on a, sur l'initative de M. le Délégué de Suisse, substitué l'indication précise de la nature des prohibitions que le pays de la célébration pourra ne pas respecter. Il s'agit de celles qui sont exclusivement fondées sur des motifs d'ordre religieux. Cela restreint beaucoup la faculté laissée au pays de la célébration; mais, dans la mesure admise, cette faculté est indispensable pour que certains pays puissent accepter la Convention. Quant au sort du mariage, la majorité de la Commission a admis que les Etats, autres que celui où la célébration a eu lieu, auraient le droit de ne pas reconnaître le mariage comme valable. Ainsi qu'il a été dit plus haut, cela va de soi pour le pays d'origine. Cela est moins nécessaire pour les autres pays; certains membres de la Commission auraient désiré qu'il n'y eût de réserve que pour le pays d'origine. Il est certainement très fâcheux et contraire à l'esprit du projet qu'un mariage soit ainsi valable dans un pays, nul ou annulable dans les autres pays. Mais ce résultat ne pouvait être évité, si on voulait concilier dans une certaine mesure le respect dû à la législation nationale et le respect dû à la législation du lieu de la célébration. En outre, il faut remarquer que la situation envisagée sera souvent celle d'individus qui, sans avoir perdu leur nationalité d'origine, sont établis définitivement dans un pays étranger et n'ont de relations que dans ce pays. Va-t-on leur imposer à perpétuité les prohibitions imposés par la législation nationale et inconnues là où ils se trouvent? Ce qui leur importe, c'est que leur mariage soit valable dans le pays où ils sont. L'incertitude sur le sort du mariage dans les autres pays aura, dans la plupart des cas, des inconvénients plutôt théoriques; c'est

ce qui permet d'accepter avec moins de répugnance le résultat de la transaction laborieuse qui est consigné dans l'article 3 du Projet.

Article 4.

Les étrangers doivent, pour se marier, établir qu'ils remplissent les conditions nécessaires d'après la loi indiquée par l'article 1.

Cette justification se fera, soit par un certificat des agents diplomatiques ou consulaires du pays des contractants, soit par tout autre mode de preuve, pourvu que les conventions internationales ou les autorités du pays de la célébration reconnaissent la justification comme suffisante.

Il n'y a que de légères différences de rédaction entre cet article et l'article 3 du Projet de Programme. Le premier alinéa renvoie, non à la loi nationale, mais à la loi indiquée par l'article 1, puisque la loi compétente peut être une loi autre que la loi nationale. Le second alinéa reproduit un amendement belge. Il est bien entendu que le droit de l'autorité du lieu de la célébration d'exiger un certificat délivré dans une certaine forme est absolu en tant qu'il ne serait pas limité par une convention internationale. Par exemple, le Gouvernement du lieu de la célébration peut ne vouloir tenir compte que de certificats délivrés par les autorités locales du pays de l'étranger; il peut aussi accepter les certificats délivrés par des consuls de carrière et refuser les certificats délivrés par des agents consulaires qui souvent n'ont que des notions insuffisantes sur la législation civile du pays dont ils soignent les intérêts commerciaux. C'est un point sur lequel a particulièrement insisté le Délégué d'Allemagne. Le résultat très désirable qu'a en vue l'article 4 sera surtout obtenu par des arrangements administratifs conclus d'Etat à Etat, tenant compte de leurs habitudes respectives. L'essentiel est d'avoir des certificats sérieux délivrés en connaissance de cause; quant à la détermination de l'autorité compétente pour les dresser, cela dépend forcément de l'organisation de chaque pays et aucune règle générale ne saurait être posée à cet égard, pas plus que quant à la forme dans laquelle les certificats devraient être rédigés.

En Hongrie, le Ministre de la Justice a le droit de dispenser de la présentation de tout certificat. Evidemment le mariage est régulièrement célébré en vertu d'une telle dispense qui constate que, dans les cas particuliers, un certificat n'est pas nécessaire.

Article 5.

Sera reconnu partout comme valable, quant à la forme, le mariage célébré suivant la loi du pays où il a eu lieu.

Il est toutefois entendu que les pays dont la législation exige une célébration religieuse, pourront ne pas reconnaître comme valables les mariages contractés par leurs nationaux à l'étranger sans que cette prescription ait été observée.

Les dispositions de la loi nationale, en matière de publications, devront être respectées mais le défaut de ces publications ne pourra pas entraîner

la nullité du mariage dans les pays autres que celui dont la loi aurait été violée.

Une copie authentique de l'acte de mariage sera transmise aux autorités du pays de chacun des époux.

Si on compare cet article à l'article 4 correspondant du Projet de Programme, il semble n'y avoir pas de différence bien notable: l'alinéa 1er est identique dans les deux articles; les alinéas 2 et 4 ont subi un changement de pure forme; l'alinéa 3 précise davantage ce qui concerne les publications. Mais les dispositions arrêtées en 1893 et en 1894 n'ont été maintenues qu'après une discussion et des déclarations qu'il importe de faire connaître à la Conférence.

Le premier alinéa qui se borne à appliquer à la forme du mariage la célèbre maxime locus regit actum, a été adopté sans objection.

La disposition du second alinéa avait été, en 1893, le résultat d'une transaction entre les pays dont la législation exige la célébration religieuse du mariage et les autres pays en majorité dans la Conférence; elle n'avait pas été remise en question en 1894. Il ne devait pas en être de même en 1900. Des objections en sens diamétralement opposé ont été soumises à la Commission.

Les Délégués de France, de Belgique et de Suède ont demandé la suppression pure et simple de l'alinéa 2. Ils ne contestaient pas qu'un mariage civil, contracté, par exemple, en France ou en Allemagne par deux Russes, pût être regardé en Russie comme nul à défaut de célébration religieuse: c'était un résultat qu'on devait subir dans l'état des législations respectives. Mais il était grave que la France ou l'Allemagne reconnussent expressément qu'un mariage célébré régulièrement sur leur territoire était ailleurs regardé comme nul. L'amendement a été rejeté par la grande majorité de la Commission qui ne voulait pas revenir sur la transaction de 1893.

La Commission s'est alors trouvée en face d'un amendement du Gouvernement russe conçu dans une pensée bien différente; en voici la teneur: „Il est toutefois entendu que les mariages contractés à l'étranger, si l'une ou les deux parties contractantes appartiennent à la nationalité d'un pays, dont la législations exige une célébration religieuse, ne seront reconnus comme valables que si, indépendamment de l'observation des prescriptions de la loi locale, ils ont été célébrés par le clergé compétent.“ L'attitude du Gouvernement Russe a été clairement exposée dans une déclaration lue à la Commission par M. Goussakowsky et que nous croyons nécessaire de reproduire intégralement à raison de sa grande importance:

„Je me permettrai de déclarer à la Commission, qu'avant d'accepter l'invitation du Gouvernement Néerlandais de prendre part à la 3ième Conférence, le Gouvernement de Russie a eu beaucoup de scrupules à écarter. Notre législation concernant les rapports matrimoniaux repose sur un principe, d'après lequel le mariage n'est pas un simple acte civil, mais un sacrement. La loi actuellement en vigueur en Russie prescrit que non seulement des personnes appartenant à une religion chrétienne, mais même

des Israélites et des payens doivent célébrer le mariage religieusement devant le clergé de leur culte respectif. Puisque ces prescriptions de la loi sont essentiellement opposées à la législation de plusieurs Etats représentés à la Conférence, le Gouvernement de Russie, pour conclure une convention par rapport au mariage, devra renoncer à l'application de notre législation aux étrangers et admettre pour eux la forme civile du mariage, quoique cette forme jusqu'à présent soit considérée en Russie comme contraire à l'ordre public. Cependant, d'après la statistique officielle, le nombre des Russes qui contractent mariage hors de leur pays, est tout a fait insignifiant, tandis que le nombre des étrangers qui habitent en Russie et s'y marient, est énorme. En conséquence, ce n'est pas pour protéger nos nationaux, que la nécessité de conclure une convention concernant le mariage s'impose au Gouvernement de Russie. C'est plutôt le désir d'améliorer la situation des étrangers, habitant notre pays, qui peut motiver la conclusion d'une pareille convention, car, à présent étant obligés de contracter mariage suivant la loi du lieu de leur domicile, ces étrangers s'exposent au danger que, dans leur patrie, leur mariage soit déclaré nul et non avenu. En se résignant à modifier dans une certaine mesure sa législation et à ne pas l'appliquer aux étrangers, le Gouvernement de Russie ne peut faire cette concession que sous la condition de la réciprocité. L'application de la loi nationale des étrangers pourrait être admise dans notre pays, dans le cas seulement où notre législation, exigeant la célébration religieuse du mariage de nos nationaux, serait respectée dans tous les Etats contractants. A cet égard, j'ai des instructions formelles et tout à fait décisives. Si l'amendement proposé par mon Gouvernement était rejeté par la Conférence, je serais obligé de déclarer que la Russie ne pourra pas participer à la Convention. Je vous prie, M. le Président, de prendre acte de cette déclaration.

La Commission a hautement appréciée l'intention exprimée par le Gouvernement Russe de modifier dans une certaine mesure sa législation en ce qui concerne les mariages que des étrangers voudraient contracter sur son territoire. Mais, par contre, elle n'a pu, à son grand regret, concéder ce que la Gouvernement Russe demande pour le mariage de ses sujets à l'étranger; il veut que la prescription du mariage religieux leur soit appliquée partout, de telle sorte que l'union qui méconnaîtrait cette prescription serait nulle même dans le pays où elle aurait été contractée. Dans la plupart des pays représentés, il est vrai de dire que le droit public s'oppose à une pareille conclusion. C'est un de ces cas dans lesquels deux législations, répondant à des aspirations différentes, mais également respectables, ne peuvent trouver un terrain commun; elles se respectent et exercent leur action parallèlement. La Commission Néerlandaise, tout en estimant non acceptable la proposition russe dans toute sa portée, avait pensé qu'il y aurait lieu d'examiner si l'on ne pourrait arriver à une entente en y apportant la restriction que le mariage non religieux ne sera défendu que si le mari appartient à un pays dont la législation exige la célébration religieuse. Il est douteux qu'une proposition en ce sens eût été admise par

la majorité de la Commission: en présence de la déclaration russe, il n'y avait pas à la mettre en discussion.

Le second alinéa a donc été maintenu tel quel. Le mariage, dans le cas prévu, doit être considéré cemme valable, quant à la forme, partout sauf dans le pays d'origine dont la loi exigeant une cérémonie religieuse a été méconnue. Il ne doit pas y avoir de doute à ce sujet. La Commission a rejeté une proposition ayant pour but de dire que ce mariage ne serait valable que dans le pays où il aurait été célébré. Ainsi, deux Russes se marient civilement et non religieusement en France ou en Allemagne; leur mariage sera valable partout, sauf en Russie. On ne réserve pas aux Etats dont la législation exigerait également la célébration religieuse, la faculté de déclarer nul un tel mariage. La restriction au principe général de l'alinéa 1er doit être aussi limitée que possible.

Quant à la disposition sur les publications, elle peut être brièvement motivée. Si on s'en était tenu à la règle générale de l'alinéa 1er, on n'aurait à s'occuper que des dispositions de la loi du lieu de la célébration relativement aux publications qui font partie des formes du mariage. La loi nationale ou plus exactement la loi indiquée par l'article 1er. de notre projet peut prescrire des publications pour les mariages qui se font à l'étranger; ses dispositions à ce sujet doivent être respectées par les intéressés. On n'impose pas à l'autorité du lieu de la célébration d'exiger, indépendamment des publications prescrites par sa propre loi, celles que prescrirait la loi des futurs époux. Si les intéressés n'ont pas respecté, quant aux publications, la loi à laquelle ils sont soumis pour les conditions de leur mariage, cette loi déterminera naturellement la sanction qui pourra être la nullité. Mais la nullité ne pourra être prononcée de ce chef dans les pays autres que celui dont la loi a été violée. Notre projet précise nettement ce point qui n'avait pas été prévu dans le texte arrêté en 1894.

Article 6.

Sera reconnu partout comme valable, quant à la forme, le mariage célébré devant un agent diplomatique ou consulaire, conformément à sa législation, si aucune des deux parties contractantes n'est ressortissante de l'Etat où le mariage a été célébré et si cet Etat ne s'y oppose pas. Il ne peut pas s'y opposer quand il s'agit d'un mariage, qui, à raison d'un mariage antérieur ou d'un obstacle d'ordre religieux, serait contraire à ses lois.

La réserve du second alinéa de l'article 5 est applicable aux mariages diplomatiques et consulaires.

Cet article correspond à l'art. 5 du Projet de Programme qui a été modifié et complété.

On avait proposé d'abord de supprimer dans la première ligne les mots quant à la forme, par ce motif que la disposition visait le fond comme la forme. Mais, à la réflexion, l'observation n'a point paru juste, attendu que, si la législation de l'agent diplomatique ou consulaire est naturellement compétente pour la forme du mariage auquel il procède,

elle ne l'est pas nécessairement pour le fond. L'agent devra rechercher si les futurs époux ont le droit de contracter mariage d'après la loi indiquée dans l'article 1 du projet. Cette loi peut ne pas être celle de l'agent diplomatique ou consulaire, surtout si l'on admet, conformément à notre proposition, qu'il n'y a pas besoin que les deux futurs époux soient ses ressortissants.

Sur le point de savoir quand l'agent diplomatique ou consulaire est compétent, plusieurs systèmes ont été présentés. D'après le Projet de Programme, il faudrait que les deux époux fussent ses ressortissants; d'après des amendements de l'Allemagne, de la Belgique, il suffirait que l'un des futurs époux fût le ressortissant de l'agent. Enfin, un système intermédiaire, soutenu par la Hongrie, voulait que le fiancé fût son ressortissant. Après discussion, il a semblé à la Commission qu'il n'y avait à exclure que le cas où l'une des parties serait la ressortissante de l'Etat sur le territoire duquel le mariage est célébré; l'intervention de l'agent diplomatique ou consulaire en pareil cas serait vraiment une atteinte à la souveraineté territoriale. En dehors de cela, il doit suffire que l'un des futurs époux soit le ressortissant de l'agent qui procède au mariage, cela est d'accord avec l'esprit de la disposition qui est de faciliter les mariages. Très souvent les futurs époux ne sont pas de même nationalité et, si on exigeait que le fiancé fût le ressortissant du Consul, on empêcherait le mariage pour le cas où, dans la localité. il n'aurait pas de Consul bien qu'il y eût un Consul dont la fiancée serait la ressortissante. Cette considération que l'on doit faciliter les mariages diplomatiques et consulaires est d'autant plus puissante que souvent ils sont seuls possibles, les autorités locales ne voulant pas marier les étrangers dans certaines circonstances.

Où les agents diplomatiques ou consulaires pourront-ils user de la faculté qui leur est ainsi reconnue? On comprendrait que cela fût dans tous les Etats contractants, comme le proposait la Roumanie en demandant la suppression des mots de la fin de l'ancien article 5: et si la législation du pays, où le mariage est célébré, ne s'y oppose pas. Sous une autre forme, la France faisait une proposition analogue en exprimant l'avis que l'article ferait mieux l'objet d'une convention spéciale, notamment parce qu'alors on saurait exactement quels sont les pays dont la législation ne s'oppose pas aux mariages consulaires, tandis qu'actuellement il y a souvent incertitude à cet égard. Les deux propositions ont été rejetées; on n'a pas voulu exclure l'article du projet ni admettre d'une manière générale la compétence des agents diplomatiques ou consulaires. On a donc maintenu le système admis précédemment. L'Etat sur le territoire duquel réside le Consul peut s'opposer à la célébration des mariages par lui; le mot Etat a été employé à dessein pour comprendre deux cas: il peut y avoir dans la législation territoriale un texte s'opposant à la célébration de pareils mariages; à défaut de texte, il suffit que le Gouvernement déclare qu'il ne permet pas ces mariages, parce que le pouvoir d'exclure l'action d'une autorité étrangère sur son territoire rentre naturellement dans ses attributions. Les Gouvernements qui veulent donner à leurs agents diplomatiques ou

consulaires des attributions en matière de mariage, devraient s'adresser aux Gouvernements sur le territoire desquels ces agents résident pour leur demander s'ils ne s'opposent pas à l'exercice de pareilles attributions.

Si le projet continue à réserver à chaque Gouvernement la faculté de ne pas permettre les mariages consulaires sur son territoire, ce n'est pas d'une manière absolue. La réserve se comprend, quand les étrangers peuvent s'adresser aux autorités locales. Mais, s'ils ne peuvent s'adresser à ces autorités, parce qu'il s'agit de mariages contraires à leurs lois par suite d'un obstacle de la nature de ceux dont il a été parlé plus haut à propos du dernier alinéa de l'article 2, le Souverain territorial doit permettre que ces mariages soient célébrés par les consuls. C'est le sens de la seconde phrase du 1er alinéa de l'article 6.

Deux observations importantes doivent encore être faites à propos des mariages diplomatiques ou consulaires.

La première est qu'à ces mariages s'appliquent les prohibitions énoncées dans l'article 2. L'agent diplomatique ou consulaire doit respecter les lois du pays où il se trouve. L'article 2 est conçu en termes très généraux; il dit: „la loi du lieu de la célébration peut interdire le mariage . . .“, il ne dit pas, comme cela avait été proposé, peut interdire à ses autorités. Si le Consul, au mépris des prohibitions de la loi locale, avait célébré un mariage non contraire à la loi nationale des époux, le mariage ne pourrait être annulé, par application de l'avant dernier alinéa de l'article 2. De même que l'interdiction s'applique aux mariages consulaires, de même l'on doit admettre pour ces mariages le tempérament proposé pour le cas où l'interdiction serait méconnue. Il y a identité de raisons.

Enfin les mariages diplomatiques ou consulaires comportent la même réserve que les mariages célébrés par les autorités locales au point de vue de la nécessité d'une célébration religieuse. Il n'y avait pas eu besoin de la faire dans le projet de 1894 qui supposait que les deux époux étaient les ressortissants de l'agent diplomatique ou consulaire. Le Gouvernement oont la législation n'admet que le mariage religieux, ne donnera évidemment pas à ses agents la faculté de célébrer des mariages. La situation est tout autre dans le projet actuel qui exige seulement que l'un des futurs époux soit le ressortissant du Consul; si l'autre est le ressortissant d'un pays qui exige le mariage religieux, ce pays pourra considérer le mariage consulaire comme nul. C'est ce que veut dire le second alinéa de l'article 6.

Article 7.

Le mariage, nul quant à la forme dans le pays où il a été célébré, pourra néanmoins être reconnu comme valable dans les autres pays, si la forme prescrite par la loi nationale de chacun des époux a été observée.

Cette disposition est toute nouvelle. Voici l'hypothèse qu'elle a en vue: deux personnes qui appartiennent à un pays dont la législation admet le mariage religieux se marient devant un prêtre dans un pays où l'état civil est sécularisé. Ce mariage est nul dans le pays comme contraire à une loi d'ordre public, d'autant plus que quelquefois la législation du

lieu édictera une peine contre le ministre du culte qui célèbrera un mariage sans qu'il lui soit justifié de la célébration préalable du mariage civil. Néanmoins il n'est pas à croire que ce mariage soit déclaré nul dans le pays d'origine dont la loi a été respectée. Pourquoi les pays tiers n'en admettraient-ils pas également la validité? C'est la situation inverse de celle qui est prévue dans l'article 5, alinéa 3, pour les publications prescrites par la loi du pays d'origine. Dans un cas, c'est la loi de ce dernier pays qui a été violée. Dans l'autre, c'est la loi du lieu de la célébration. Que le pays dont la loi a été méconnue, réprime la violation en annulant le mariage, cela est naturel; mais la même solution ne s'impose pas aux autres pays, alors qu'il s'agit d'une prescription de forme. On peut trouver également qu'il y a dans le nouvel article 7 une contrepartie de la disposition du second alinéa de l'article 5; cette dernière disposition reconnaît au pays d'origine le droit de prononcer la nullité d'un mariage non religieux qui est valable dans le lieu de la célébration, ici on lui garantit le droit de reconnaître la validité d'un mariage religieux qui est nul dans le pays de la célébration où même le ministre du culte qui le célèbrerait serait exposé à des peines correctionnelles.

Il a été parlé, jusqu'à présent, d'un mariage religieux pour expliquer l'article 7. Il convient de remarquer qu'il a une portée plus large, qu'il s'appliquerait au mariage célébré par un Consul dans un pays dont la législation s'oppose à l'intervention des consuls en cette matière. Le mariage est nul en la forme dans ce pays. Pourquoi ne serait-il pas regardé comme valable dans l'Etat de qui relève le Consul et dans les autres Etats? Il y a la même raison de décider que pour le mariage religieux ou même une raison plus forte, parce que les époux ont dû naturellement croire que leur Consul agissait régulièrement. Que le Gouvernement sur le territoire duquel le mariage a été célébré se plaigne au Gouvernement du Consul de l'incorrection commise, qu'il aille jusqu'à faire annuler par ses tribunaux le mariage qui n'est pas conforme à sa loi, cela, se comprend; mais il n'y a pas de raison d'aller plus loin.

La disposition de l'article 7 avait d'abord été restreinte au cas du mariage célébré entre les ressortissants d'un même Etat; cette condition a disparu dans la rédaction définitive. Il suffit que la loi des deux parties admette la validité d'un pareil mariage; peu importe qu'elles soient ou non de même nationalité. Par exemple, l'article 7 s'appliquera au mariage d'un Suédois avec une Norvégienne, célébré par un pasteur suédois ou norvégien.

Article 8.

La présente Convention ne s'applique qu'aux mariages célébrés sur le territoire des Etats contractants entre personnes dont une au moins est ressortissante d'un de ces Etats.

Aucun Etat ne s'oblige, par la présente Convention, à appliquer une loi qui ne serait pas celle d'un Etat contractant.

C'est sur la proposition du Délégué d'Allemagne que la Commission s'est occupée de délimiter le champ d'application de la Convention. Des

systèmes très divers ont été proposés. On est tombé assez facilement d'accord que la Convention ne concernait que les mariages célébrés sur le territoire des Etats contractants. Mais devait-elle s'appliquer à tous ces mariages abstraction faite de la nationalité des parties? On a songé un instant à le dire en invoquant l'intérêt supérieur de chaque Etat qui est pour la régularité et la validité des actes accomplis sur son territoire même par les étrangers. Mais on n'a pas tardé à reconnaître que les Etats traitent pour leurs ressortissants et non pour les étrangers. Si un Américain épouse une Anglaise à Berlin, la situation est naturellement réglée par les dispositions sur le conflit des lois qui se trouvent dans la législation allemande. En quoi la France, la Belgique, l'Italie seront-elles intéressées à ce que l'Allemagne applique dans l'espèce les règles de la Convention?

Faut-il exiger que les deux époux soient ressortissants des Etats contractants? L'affirmative semblait naturelle. Si, par exemple, un Français veut épouser une Anglaise en Allemagne, a-t-on dit, les autorités allemandes devront appliquer au Français les règles de la Convention, mais pour l'Anglaise, elles appliqueront les dispositions de leur droit intérieur sur le conflit des lois, dispositions qui pourront concorder plus ou moins avec les règles de la Convention. Outre que le dualisme entraînerait de grandes complications dans la pratique, il ne répond pas à une idée juste. Dans l'espèce, un Etat contractant a intérêt à ce que, pour le mariage d'un ressortissant avec un non ressortissant, on applique la Convention qui a posé des règles regardées comme bonnes dans la matière et dont l'observation garantit la validité du mariage dans les Etats contractants. Donc il faut et il suffit que l'un des futurs époux soit le ressortissant d'un Etat contractant.

Par conséquent, si des ressortissants des Etats contractants se marient hors du territoire de ces Etats ou si des ressortissants des Etats non contractants se marient sur ce territoire, la Convention ne s'applique pas. On recourra aux règles sur les conflits des lois qui peuvent se trouver dans la législation, les précédents judiciaires ou la doctrine. La délimitation qui vient d'être faite est importante, parce que, pour les cas qui rentrent dans la Convention, les dispositions qu'elle contient écartent les règles de collision qui peuvent se trouver dans les législations particulières.

Ensuite l'article 8 contient une réserve au sujet de la loi applicable. Si la Convention ne s'appliquait qu'aux mariages conclus exclusivement entre des ressortissants et si les diverses législations admettaient que le droit de contracter mariage est réglé par la loi nationale, il ne pourrait être question d'appliquer qu'une loi d'un Etat contractant et les Etats associés connaissant ou étant censés connaître leurs législations respectives, ils peuvent s'obliger à les respecter dans la mesure prévue par la Convention. Mais il y a, dans les Etats contractants, des législations qui renvoient à la loi du domicile. Un ressortissant d'un Etat contractant peut être domicilié dans un pays non contractant dont la loi deviendrait ainsi applicable si on n'admet pas un tempérament. Cela se présentera surtout fréquemment dans le cas du mariage d'un ressortissant avec un

non ressortissant. Une précaution doit donc être prise; on ne peut s'engager à respecter une loi quelconque qui serait applicable au mariage d'après le principes posés, parce que cette loi pourrait être celle d'un pays d'une civilisation tout à fait différente. Ainsi l'article 8, al. 2, déclare-t-il qu'aucun Etat contractant ne s'oblige à appliquer une loi qui ne serait pas celle d'un Etat contractant; pour une telle loi, chaque Etat reprend sa liberté d'appréciation et de décision.

Il est à peine besoin de faire remarquer que la loi applicable dont il vient d'être parlé est la loi sur les qualités et conditions pour contracter mariage, non la loi qui règle les conflits de lois. Si une Américaine est domiciliée à Berlin et veut s'y marier, rien ne s'oppose à ce que l'on tienne compte de la loi de son domicile, si sa loi nationale y renvoie.

Enfin la Commission doit exprimer son opinion sur une proposition complémentaire de la Commission Néerlandaise au sujet de l'action en nullité du mariage. Cette Commission a estimé qu'une règle uniforme sur cette matière serait désirable et a recommandé la disposition suivante:

„L'action en nullité du mariage pourra être intentée dans tous les cas où elle est admise, soit par la loi du pays auquel appartenait le mari, soit par celle du pays auquel appartenait la femme lorsque le mariage a été contracté, et dans tous les cas où un mariage aurait été contracté contrairement aux dispositions précédentes, sauf dans les cas où tant d'après les lois du pays auquel appartenait le mari que de celui auquel appartenait la femme lorsque le mariage a été contracté, l'action en nullité est éteinte.

Les effets de l'action en nullité seront régis par la loi, sur la violation de laquelle elle aura été basée."

Cette proposition, complétée par une intéressante note de M. Heemskerk, n'a pas été discutée au fond. La Commission, après examen, a persisté dans l'opinion formulée dans le rapport de sa devancière de 1894*) qui se résumait en ceci: la sanction de la loi ne devant pas être séparée de la loi elle-même, la loi déclarée compétente par la Convention pour fixer les conditions de validité du mariage, les formalités à observer pour la célébration, l'est également pour toutes les conséquences de la violation de ses prescriptions, pour édicter la nullité et en déterminer les caractères. Sans doute des questions délicates pourront se présenter, mais il est impossible de songer à les résoudre par avance. Laissons à la jurisprudence et à la doctrine le soin de déblayer le terrain, n'empiétons pas trop sur le domaine des législations particulières et ne donnons pas de nouveaux motifs pour rejeter notre projet. Si celui-ci est adopté et que des conflits sérieux surgissent quant aux actions en nullité, nous aurons des successeurs qui corrigeront et compléteront notre œuvre.. A chaque jour suffit sa peine. Ces considérations générales sont encore fortifiées par ce fait que notre projet prévoit certains cas dans lesquels une question internationale peut surgir à propos de la nullité d'un mariage et donne des solutions. Voir article 2, av. dern. et dern, alin., article 3,

*) Actes de la Deuxième Conférence, page 81.

alin. 2., article 5, al. 2 et 3, article 6, al. 2, article 7. On ne peut donc pas dire que la Commission ne s'est pas occupée de la nullité du mariage, mais elle ne l'a fait que dans la mesure où il y avait vraiment une question internationale en jeu.

La Commission a aussi discuté la proposition du Gouvernement Hongrois, tendant à ce que la Conférence examinât la question de la compétence en matière d'actions en nullité du mariage ainsi qu'une proposition du Gouvernement Espagnol ayant le même but. Mais elle n'a pas jugé qu'il fût possible d'entrer actuellement dans les difficultés très complexes que soulève la compétence en cette matière.

En conséquence, la Commission soumet à la Conférence les résolutions suivantes:

Avant-Projet d'une Convention pour régler les conflits de lois en matière de mariage.

Article 1. (Voir article 1 du Projet de Programme.)

Le droit de contracter mariage est réglé par la loi nationale de chacun des futurs époux, à moins qu'une disposition de cette loi ne se réfère expressément à une autre loi.

Article 2. (V. article 2 Proj. de Pr.)

La loi du lieu de la célébration peut interdire le mariage des étrangers, qui serait contraire à ses dispositions concernant:

1° les degrés de parenté ou d'alliance, pour lesquels il y a une prohibition absolue:

2° la prohibition absolue de se marier, édictée contre les coupables de l'adultère, à raison duquel le mariage de l'un d'eux a été dissous;

3° la prohibition absolue de se marier, édictée contre des personnes condamnées pour avoir de concert attenté à la vie du conjoint de l'une d'elles.

Le mariage célébré contrairement à une des prohibitions mentionnées ci-dessus ne sera pas frappé de nullité, pourvu qu'il soit valable d'après la loi indiquée par l'article 1er.

Sous la réserve de l'application du premier alinéa de l'article 6 de la présente Convention, aucun Etat contractant ne s'oblige à faire célébrer un mariage qui, à raison d'un mariage antérieur ou d'un obstacle d'ordre religieux, serait contraire à ses lois. La violation d'un empêchement de cette nature ne pourrait pas entraîner la nullité du mariage dans les pays autres que celui où le mariage a été célébré.

Article 3. (Article nouveau).

La loi du lieu de la célébration peut permettre le mariage des étrangers non-obstant les prohibitions de la loi indiquée par l'article 1er, lorsque ces prohibitions sont exclusivement fondées sur des motifs d'ordre religieux.

Les autres Etats ont le droit de ne pas reconnaître comme valable le mariage célébré dans ces circonstances.

Article 4. (V. article 3 Proj. de Pr.)

Les étrangers doivent, pour se marier, établir qu'ils remplissent les conditions nécessaires d'après la loi indiquée par l'article 1er.

Cette justification se fera, soit par un certificat des agents diplomatiques ou consulaires du pays des contractants, soit par tout autre mode de preuve, pourvu que les conventions internationales, ou les autorités du pays de la célébration reconnaissent la justification comme suffisante.

Article 5. (V. article 4 Proj. de Pr.)

Sera reconnu partout comme valable, quant à la forme, le mariage célébré suivant la loi du pays où il a eu lieu.

Il est toutefois entendu que les pays dont la législation exige une célébration religieuse, pourront ne pas reconnaître comme valables les mariages contractés par leurs nationaux à l'étranger sans que cette prescription ait été observée.

Les dispositions de la loi nationale, en matière de publications, devront être respectées; mais le défaut de ces publications ne pourra pas entraîner la nullité du mariage dans les pays autres que celui dont la loi aurait été violée.

Une copie authentique de l'acte de mariage sera transmise aux autorités du pays de chacun des époux.

Article 6. (V. article 5 Proj. de Pr.)

Sera reconnu partout comme valable, quant à la forme, le mariage célébré devant un agent diplomatique ou consulaire, conformément à sa législation, si aucune des parties contractantes n'est ressortissante de l'Etat où le mariage a été célébré et si cet Etat ne s'y oppose pas. Il ne peut pas s'y opposer quand il s'agit d'un mariage, qui, à raison d'un mariage antérieur ou d'un obstacle d'ordre religieux, serait contraire à ses lois.

La réserve du second alinéa de l'article 2 est applicable aux mariages diplomatiques et consulaires.

Article 7. (Article nouveau.)

Le mariage, nul quant à la forme dans le pays où il a été célébré, pourra néanmoins être reconnu comme valable dans les autres pays, si la forme prescrite par la loi nationale de chacune des parties a été observée.

Article 8. (Article nouveau.)

La présente Convention ne s'applique qu'aux mariages célébrés sur le territoire des Etats contractants entre personnes dont une au moins est ressortissante d'un de ces Etats.

Aucun Etat ne s'oblige, par la présente Convention, à appliquer une loi qui ne serait pas celle d'un Etat contractant.

Le Président et Rapporteur:

L. Renault.

Procès-verbal nº 8. (Séance du 16 juin 1900.)

La séance est ouverte à 10 heures.

Sont présents:

M. M. Asser, Président, Dungs, Kriege, Schumacher, Töry, de Paepe, van den Bulcke, Matzen, Oliver y Esteller, Renault, Lainé, le baron Galvagna, Pierantoni, Heemskerk, Ort, le comte de Selir, Missir, de Martens, Goussakowsky, de Hammarskjöld, Reichmann, Meili et Roguin.

La discussion est ouverte sur les propositions de la Troisième Commission relatives à

la tutelle des majeurs.*)

Le Président propose de procéder d'après le système que l'on a suivi dans la matière de la faillite. Il y aura donc un échange de vues général aboutissant à un vœu de la Conférence, qui sera soumis aux différents Gouvernements.

La Conférence s'étant rangée à cet avis, et personne ne désirant la parole sur l'ensemble de l'avant-projet, on aborde l'examen de l'article 1er, conçu en ces termes:

La tutelle des majeurs — y compris la mise en curatelle ou la dation d'un conseil judiciaire — est réglée par leur loi nationale.

M. Schumacher, Président de la Troisième Commission, signale que les premiers mots de l'article 1: „la tutelle", devront être remplacés par les mots: „l'interdiction", pour que cet article ne soit pas en désaccord avec le texte des autres articles relatifs à cette matière.

M. van den Bulcke fait observer que, sous l'empire du Code Civil, la mise sous conseil judiciaire n'est pas une interdiction; celui qui se trouve dans cette situation est capable d'administrer ses biens, mais seulement, dans certains cas déterminés, avec l'assistance de son conseil. Il faudrait donc modifier l'intitulé et supprimer dans l'article 1 les mots: „y compris."

M. Missir, Rapporteur, explique que la Commission a considéré le mot „interdiction" comme un terme général pour toute espèce d'amoindrissement de la capacité des majeurs.

M. Beichmann remarque qu'une pareille modification de la rédaction devra entraîner aussi des changements dans la rédaction des autres articles.

M. Missir, Rapporteur dit que la Commission a voulu énoncer au premier article le principe de l'interdiction comprenant la dation d'un conseil judiciaire et la curatelle, mais qu'elle n'a pas cru nécessaire de répéter toujours les autres expressions.

Pour cette raison on a employé le mot „interdiction."

Le Président rappelle qu'il ne s'agit pas d'arrêter des dispositions qui seront insérées dans une convention. Il n'y aura donc pas de vote. On se bornera à un échange de vues général.

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*) Voir l'annexe 1 à ce Procès-verbal.

On passe à la discussion de l'article 2:

Sauf les cas prévus aux articles suivants, l'interdiction ne peut être prononcée que par les autorités compétentes de l'Etat duquel ressortit la personne à interdire.

M. Roguin estime qu'il est impossible de faire maintenant des observations de détail sur le texte ou le fond du très remarquable projet qui est soumis à la Conférence. Il désire cependant dire un mot sur la tendance générale de cette oeuvre.

Il s'agit ici de la législation et de la compétence nationales d'un côté, de la législation et de la compétence locales de l'autre. La Commission a su surmonter la plus grande difficulté qui se trouvait sur son chemin et qui consistait à concilier les deux principes opposés.

Ce sujet a été longuement discuté à Genève dans la réunion de l'Institut de Droit International, et ce n'est qu'avec la plus grande peine, après un travail qui a duré des années, que l'on est arrivé à un système transactionnel.

M. Roguin propose de faire imprimer, comme annexe au Rapport, les décisions de l'Institut. Cette annexe formera ainsi un guide pour les Gouvernements.

Le Président approuve la proposition de M. Roguin.

On passe à l'article 3;

L'interdiction prononcée par les autorités compétentes de l'Etat duquel ressortit la personne interdite produira ses effets dans tous les autres Etats sans qu'il soit besoin d'un exéquatur.

Toutefois les mesures de publicité prévues par la loi locale pour l'interdiction des nationaux seront également appliquées à l'interdiction d'un étranger si la loi du lieu l'exige.

M. Pierantoni remarque que dans certains pays, par exemple en Italie, le système de publicité proprement dite n'existe pas; mais dans ces pays on trouve des registres des personnes interdites, que le public peut aller consulter.

N'y aurait-il pas lieu de tenir compte de cette distinction dans l'article 3?

M. Missir, Rapporteur, répond que l'article 3 vise la publicité considérée dans un sens général et embrassant nécessairement l'enregistrement sur des registres publics. La distinction à laquelle le Délégué d'Italie fait allusion n'en est pas une de fond. Par conséquent il croit que les termes de l'article suffiront pour exprimer non seulement la publicité par la presse, mais également celle par les registres publics et officiels.

M. Renault aimerait à recevoir une explication sur le sens des derniers mots du second alinéa: „si la loi du lieu l'exige"; il demande si cela suppose le cas où la loi du lieu contient des dispositions spéciales en ce qui concerne la publicité des interdictions prononcées à l'étranger. Sinon la phrase lui paraît être superflue.

M. Schumacher, Président de la Commission, dit que la Commission n'a pas voulu poser le principe général que les „mesures de

publicité prévues par la loi locale pour l'interdiction des nationaux" devront être appliquées à l'interdiction d'un étranger. La Commission a eu l'intention de laisser à chaque législation interne le soin de décider si les publications requises pour l'interdiction des étrangers seraient les mêmes que celles prescrites pour l'interdiction des nationaux.

On a donc voulu donner une faculté aux Etats, mais non pas leur imposer une obligation. Tel était en effet l'avis de la Commission. Un de ses membres M. Beichmann, aurait même préféré restreindre davantage la faculté en question.

M. Pierantoni appelle l'attention des auteurs du projet sur la nécessité d'étudier un système tendant à faire connaître partout les noms des étrangers soumis à un conseil. Les lois qui admettent la prodigalité comme cause de dation d'un conseil judiciaire poussent les prodigues à exploiter étranger. Ils vont faire à l'étranger des dettes, quelquefois très fortes; mais quand on les appelle en justice pour le payement, les curateurs répondent qu'ils étaient incapables. Il est possible de connaître la condition juridique des citoyens, mais de nos temps les moyens de transport sont si faciles, et le commerce s'est tant développé, qu'il est presque impossible de se sauvegarder contre les cas, bien fréquents, de surprise.

M. Lainé propose une modification de rédaction. Il veut remplacer les mots: „seront également appliquées à . . ." par les mots: „pourront être déclarées par elle également applicables à . . ."

M. Schumacher, Président de la Commission, déclare que la rédaction proposée par M. Lainé rend exactement la pensée de la Commission.

On aborde l'examen de l'article 4:

Si celui qui est à interdire a sa résidence à l'étranger, les autorités du lieu pourront prendre toutes les mesures provisoires pour protéger sa personne et ses intérêts.

M. de Martens préférerait remplacer les mots: „pourront prendre", qui expriment une faculté, par le mot: „prendront" qui crée une obligation pour les autorités dont parle l'article.

M. Penault appuie la proposition de M. de Martens.

Le Président dit qu'il avait l'intention de faire une proposition analogue relative à l'article 7 des dispositions concernant la tutelle des mineurs.

M. Pierantoni signale que l'on ne parle pas dans cet article de la compétence des agents consulaires de régler le conseil judiciaire de tutelle pour les majeurs. S'ils réglent cette compétence pour les mineurs, pourquoi ne pas le faire quand il s'agit des majeurs.

Il démontre le rapport existant entre cette matière et les dispositions concernant la tutelle des mineurs.

M. Missir, Rapporteur, répond que la Commission a eu en vue cette idée, cependant elle l'a repoussée à cause des objections suivantes. Les mineurs sont incapables par suite des dispositions de leur loi. On vient à leur aide par une tutelle, réglée par la loi: l'organisation de la tutelle peut donc être conférée par la loi à toute autorité. Mais la tutelle des

majeurs a plutôt le caractère d'une capitis diminutio; la loi intervient dans l'état civil de ces personnes; cet état ne peut être mis en jeu que devant la justice, soit étrangère, soit nationale, mais jamais devant un agent consulaire ou diplomatique.

M. Pierantoni fait une réserve quant à la compétence des autorités étrangères de modifier la capacité d'un ressortissant d'un autre Etat. Il croit nécessaire d'insérer dans les règles sur la tutelle et la curatelle des majeurs les dispositions relatives à l'action des consuls et des agents diplomatiques et cela pour la considération que les abus contre les majeurs se produiront plus souvent. Il faut de reste étudier les lois intérieures pour savoir si toutes les lois reconnaissent l'action du ministère public.

M. de Martens dit que, s'il a bien compris la pratique est que les autorités locales avertissent, le cas échéant, le plus tôt possible l'agent diplomatique ou consulaire; ensuite la tutelle est organisée selon la loi du for. Il estime donc que les agents diplomatiques ne devront pas être écartés; ils exerceront les mêmes fonctions que par rapport aux mineurs.

Il croit qu'il vaudra mieux d'ajouter dans l'article, conformément à la pratique, la compétence des agents diplomatiques ou consulaires.

M. Schumacher, Président de la Commission, dit que la pratique, mentionnée par M. de Martens, ne lui est pas inconnue; elle fonctionne surtout entre la Russie et l'Autriche. La Commission ne voudrait apporter ici aucun changement. L'article 4 et les suivants n'excluront pas du tout la possibilité de conserver cette pratique, qui a paru être d'une grande utilité.

Il est vrai que cet article ne fait pas mention des agents diplomatiques ou consulaires; on n'a pas eu pour but d'exclure ces fonctionnaires, mais la mention spéciale des consuls pourrait donner lieu à des obstacles formels pour quelques-uns des Etats représentés à la Conférence.

Si une rédaction qui exclut de tels obstacles pouvait être trouvée, rien n'empêcherait de faire mention de l'intervention des agents diplomatiques ou consulaires. Ce serait même en parfait accord avec la pensée de la Commission.

M. de Martens ne comprend pas les scrupules de M. Schumacher. La tutelle d'un mineur et celle d'un majeur se trouvent dans la même position. Si l'on adopte l'intervention des agents diplomatiques ou consulaires dans la tutelle des mineurs, il n'y a aucune raison, selon l'opinion de M. de Martens, de ne pas l'adopter quand il s'agit de la tutelle d'un majeur.

M. Beichmann rappelle la rédaction des articles 7 et 8 de l'avant-projet concernant la tutelle des mineurs adopté en seconde lecture par la Conférence. Cette rédaction est conforme à celle des articles 4 et 5 du projet qui est discuté à présent.

M. de Martens tient à constater que la pratique existe et que c'est sur la pratique que l'on doit fonder le droit.

M. Roguin ne veut pas entrer dans la question de l'intervention des agents diplomatiques ou consulaires. Cependant il tient à signaler à la Commission et à la Conférence le fait qu'on exige la condition de la résidence

pour justifier des mesures provisoires. Voilà ce qu'il ne peut pas approuver. La personne devra être protégée, les mesures provisoires devront être prises partout où il pourrait y avoir urgence.

M. Roguin conseille de suivre le système de l'article 7 des dispositions concernant la tutelle des mineurs.

Le Président dit qu'il avait l'intention de faire une proposition analogue, dès que l'on aurait abordée l'article 12.

On passe à l'examen de l'article 5:

Dans le cas prévu par l'article précédent ainsi que toutes les fois que les autorités du lieu de la résidence d'un étranger seront saisies d'une demande en interdiction, elles devront donner communication aux autorités de l'Etat intéressé des mesures qui ont été prises ou de la demande introduite. En donnant cet avis elles indiqueront un délai convenable afin qu'on procède à l'interdiction conformément à la loi nationale.

M. Pierantoni demande s'il ne serait pas utile de prévoir dans cet article l'obligation d'informer la famille de celui contre qui l'interdiction a été prononcée à l'étranger.

M. de Martens dit que déjà dans la pratique les agents diplomatiques et consulaires prennent immédiatement des mesures pour que la famille soit renseignée. C'est encore une raison pour ne pas passer sous silence leurs fonctions, le rôle qui leur est propre dans les questions d'interdiction des majeurs.

M. Renault estime que l'article 5 ne cadre pas avec les institutions de plusieurs pays.

Il suppose le cas où le tribunal du lieu de résidence de l'étranger est saisi d'une demande en interdiction. D'après l'article 5, ce sera alors le tribunal qui devra en donner communication aux autorités de l'Etat intéressé. Mais, dans la plupart des pays, les tribunaux ne sont pas admis à faire de pareilles communications à des autorités étrangères. En France une telle charge de donner avis, imposée à la magistrature, serait considérée comme absolument contraire aux habitudes judiciaires.

Le Président observe qu'on pourrait, afin d'obvier à la difficulté signalée par M. Renault, charger le Ministre de la Justice du soin de donner l'avis en question.

M. Missir, Rapporteur, est d'accord qu'il s'agit de laisser intactes autant que possible les législations nationales des Etats. Mais il estime qu'en obligeant, en vertu d'une convention, les tribunaux à faire la communication requise à l'article 5, on n'empièterait en aucune façon sur les législations intérieures des divers pays. Il faut selon lui distinguer nettement entre les dispositions qui ont pour but de modifier et de compléter et celles qui ont une portée absolument dérogative.

Il ne conteste pas le bien fondé de l'observation de M. Renault. En Roumanie également, les tribunaux ne sont pas autorisés en général à faire des communications à des autorités étrangères. Cependant, comme il n'y a pas d'autre moyen possible pour que ces communications se fassent, on a résolu d'en confier le soin aux tribunaux.

Le Président croit que si l'on rédigeait l'article d'une manière plus facultative, on donnerait satisfaction aux scrupules dont M. Renault s'est fait l'interprète.

Il propose à titre d'exemple de statuer que les communications, visées à l'article 5, seront faites soit immédiatement par les tribunaux, soit par l'intermédiaire des Gouvernements.

M. Heemskerk demande comment l'autorité saura qu'il s'agit d'un étranger? Si par exemple on s'adresse au tribunal pour faire nommer une administration provisoire pour un aliéné qui se trouve dans une maison de santé, le tribunal ne saura pas s'il s'agit d'un étranger à moins que l'avoué ne l'en avertisse. Et on ne peut pas imposer aux avoués l'obligation de le faire.

M. Pierantoni déclare qu'en Italie l'obligation existe de donner avis aux agents consulaires des personnes qui vont être arrêtées pour crime, pour folie et d'autres motifs. Il croit que ce devoir existe partout. Même les directeurs des maisons de santé et d'aliénés y sont obligés.

M. Pierantoni désire qu'on prenne acte au procès-verbal de ces renseignements qui pourront être utiles pour l'élaboration d'un projet de traité qui puisse être soumis avec succès à une nouvelle Conférence.

M. de Paepe se demande pourquoi l'on ne confierait pas la charge de donner les communications en question au ministère public, qui, comme par exemple en Belgique, est désigné par la loi pour prendre soin des aliénés. Il trouve que cette fonction entrerait tout à fait dans les attributions du ministère public.

M. le Président dit qu'il s'agit surtout de trouver une rédaction qui rendrait la disposition applicable dans tous les pays.

M. Schumacher, Président de la Commission, croit qu'il suffira de consigner dans le procès-verbal les idées qui président à la discussion, pour qu'on en puisse profiter lorsque le moment sera venu de préparer une Convention sur cette matière.

Il estime qu'il est impossible à cette heure de trouver une rédaction qui puisse donner satisfaction à tous les Etats.

M. van den Bulcke croit utile, puisqu'il s'agit ici d'un échange de vues, d'appeler l'attention de la Conférence sur un système de communication qui se pratique, notamment en Allemagne et en Belgique, en matière de collocation d'aliénés. Tout directeur d'un établissement soit public, soit privé, est tenu, dès qu'un étranger y est placé, d'envoyer au Gouvernement du pays où se trouve l'asile, un bulletin de collocation. Ce bulletin est transmis par voie diplomatique au Gouvernement dont l'aliéné ressortit, et de cette manière, la famille du malade se trouve avertie. Celle-ci agit ensuite selon ses convenances et provoque souvent l'interdiction soit devant les tribunaux nationaux, soit devant ceux du lieu de la collocation. Ce système produit d'excellents résultats et pourrait éventuellement être généralisé dans la Convention sur laquelle une Conférence ultérieure se prononcera.

Le Président constate que le procès-verbal tiendra compte des différents points de vue soutenus au cours de la discussion.

On passe à l'article 6:

Si les autorités nationales de l'Etat duquel ressortit l'étranger ne donneront suite à l'interdiction pour un motif d'incompétence ou pour toute autre cause qu'un motif prévu par leur loi, les autorités du lieu de résidence de l'étranger deviennent compétentes pour prononcer l'interdiction.

M. Roguin n'a pas l'intention de faire une observation sur le texte, quoiqu'il ne le trouve pas entièrement clair.

L'idée maîtresse à laquelle il s'attache est qu'il faut se garder d'aller trop loin dans le sens de la compétence des autorités locales à prononcer une interdiction. Les autorités locales ne fonctionneront que subsidiairement; c'est bien ainsi que l'entend l'article.

Mais, dans cet ordre d'idées, est-il bien admissible de permettre aux autorités de la simple résidence de prononcer interdiction? Ailleurs, la compétence des autorités locales ne résulte que du fait d'une résidence habituelle.

M. Roguin se demande s'il ne vaudrait donc pas mieux substituer aux mots: „lieu de résidence", celui de „domicile."

Toutefois, il se borne à soulever la question, qu'il trouve très importante.

Il rappelle que cette matière a été l'objet de laborieuses discussions par l'Institut de Droit International.

M. Missir, Rapporteur, constate que la Commission a marché dans la voie des résolutions de l'Institut, auxquelles M. Roguin vient de faire allusion. Pourtant elle s'est évertuée à amoindrir encore la compétence des autorités locales. A cet effet elle propose de n'admettre la compétence des autorités locales que si les autorités nationales de l'Etat duquel ressortit l'étranger se déclarent incompétentes ou repoussent la demande pour un motif de fait. Mais, par contre, si les autorités nationales ne donnent pas suite à l'interdiction pour un motif de droit, la Commission a estimé qu'il fallait respecter ce jugement.

Ainsi, en résumé, les autorités locales ne pourront intervenir que dans le cas où il y a inaction des autorités nationales de l'Etat auquel l'étranger ressortit.

M. de Martens appelle l'attention sur des cas qui peuvent se présenter et qu'il s'agit absolument de prévoir. Il suppose par exemple un homme aliéné sans moyens pécuniaires pour se payer la retraite dans une maison de santé; sans l'Etat où il se trouve, des doutes s'élèvent sur sa nationalité: ni les autorités nationales, ni celles du lieu ne se croient tenues de se préoccuper de lui. M. de Martens se demande si, pour des cas pareils, il n'y aurait pas lieu d'obliger les autorités locales à prendre les mêmes mesures qu'elles prendraient à l'égard de leurs propres nationaux?

Des considérations d'humanité et d'équité exigent qu'on crée un moyen pour rémédier à un si triste état de choses.

M. de Paepe signale que l'obligation, visée par M. de Martens, existe déjà en Belgique. Il y a cependant encore un autre moyen également adopté en Belgique: on y reconnaît la compétence des tribunaux à intervenir en ces circonstances et à nommer un administrateur provisoire.

M. de Martens dit qu'il importe surtout de créer expressément une obligation pour les autorités locales.

M. Roguin observe que l'on doit distinguer nettement l'interdiction proprement dite des mesures de protection à prendre dans le lieu où se trouve l'individu. L'interdiction proprement dite est une question très grave.

Le Président constate que les opinions qu'on vient d'entendre seront de grande utilité pour l'avenir. Elles se trouveront consignées au le procès-verbal.

On passe à l'article 7:

Lorsque les autorités étrangères sont compétentes conformément à l'article précédent, la demande en interdiction peut être formée par les personnes ou les autorités qui ont le droit de l'introduire, soit d'après la loi nationale, soit d'après la loi de la résidence.

Elles ne peuvent donner suite à la demande que pour les causes admises par la loi de la patrie, mais elles auront à appliquer l'interdiction proprement dite, la mise en curatelle ou l'adjonction d'un conseil judiciaire conformément à la loi du lieu.

L'article ne donne pas lieu à des observations.

On passe à l'article 8:

Dans les cas prévus par les articles 6 et 7 l'administration de la personne et des biens de l'interdit est organisée conformément à la loi du lieu et les effets de l'interdiction seront régis par la même loi.

Quant aux effets l'interdiction produira dans les autres Etats, les dispositions de l'article 3 seront applicables.

M. Pierantoni demande s'il n'y aurait pas lieu de tenir compte, dans une mesure plus large, des droits de la femme. L'article 8 reconnaît seulement le droit des autorités locales à intervenir. Pourquoi n'appellerait-on pas le concours de la femme? Des circonstances peuvent se produire où elle devrait être en droit d'intervenir.

M. de Paepe dit qu'il va de soi que les parents et la femme seront avertis même s'ils ne se trouvent pas dans le pays. On s'adressera en tout cas à eux et le conseil de famille constituera la curatelle. L'intervention de la femme donc est une question de droit interne.

Le Président dit qu'il sera pris acte des observations qui viennent d'être faire.

On aborde l'article 9:

L'interdiction établie conformément aux dispositions de l'article 6 pourra être levée non seulement pour les causes admises par la loi du lieu, mais aussi pour des motifs admis par la loi nationale de l'interdit.

La demande peut être formée par les personnes ou les autorités qui sont compétentes d'après l'une ou l'autre des deux lois.

Personne ne demandant la parole sur l'article 9 on passe à l'article 10.

Si l'interdit prend sa résidence habituelle dans l'Etat duquel il ressortit, l'existence de la tutelle établie conformément aux dispositions de l'article 8 n'empêche pas de constituer une nouvelle tutelle par l'application de l'article 1.

Il sera le plus tôt possible donné information de ce fait au Gouvernement de l'Etat où l'interdiction aurait été d'abord prononcée. Ce Gouvernement en informera soit l'autorité qui aura organisé la tutelle (curatelle) soit, si une telle autorité n'existe pas, le tuteur (curateur) lui-même.

La législation de l'Etat où l'ancienne tutelle était déjà organisée décide quand cette tutelle prend fin dans le cas prévu par le présent article.

Le Président demande pourquoi on a placé les mots „curatelle" et „curateur" à l'alinéa 2 entre parenthèses.

M. Schumacher, Président de la Commission, répond qu'on a voulu tenir compte de la terminologie du droit allemand est surtout du droit autrichien. Tandis que le mot „tutelle" pourrait être traduit par „Pflegschaft", ce qui comprend la tutelle des majeurs et celle des mineurs, le mot tuteur ne correspond qu'à „Vormund". Cette dernière expression ne vise toutefois que le tuteur des mineurs. Pour cette raison, en vue d'écarter la possibilité d'une équivoque, on a cru qu'il serait nécessaire de faire une mention expresse du „curateur", le terme technique pour désigner le tuteur des majeurs.

Le Président se rappelle qu'il existe dans le droit civil autrichien une institution dont il apprécie le mérite: c'est la minorité prolongée. Y aurait-il lieu de prévoir cette institution ici? D'un autre côté il est vrai que la „minorité prolongée" suppose que le mineur reste mineur. Il s'en suivrait que cette institution ne cadrerait pas dans un règlement de la tutelle des majeurs. Il demande l'avis du Délégué d'Autriche sur ce point.

M. Schumacher répond qu'en effet cette institution est en vigueur en Autriche. Il croit cependant qu'elle est entièrement prévue par l'article 5 de l'avant-projet sur la tutelle des mineurs.

M. Pierantoni demande si l'alinéa 1 de l'article 10 suppose la capacité de l'interdit de changer de résidence sans autorisation du conseil judiciaire?

M.M. van den Bulcke et Schumacher croient que oui, et citent, à titre d'exemple, le prodigue.

M. Pierantoni estime qu'il y a là un danger parce qu'ainsi le prodigue serait en mesure d'aller faire de grandes dettes à l'étranger.

Le Président est d'avis qu'en effet cette circonstance doit être prévue.

On passe à l'article 11:

Les dispositions qui précèdent recevront leur application sans qu'il y ait à distinguer entre les meubles et les immeubles de l'incapable; sauf l'exception quant aux immeubles placées par la loi de leur situation sous un régime foncier spécial.

Cet article ne donne pas lieu à des observations.

La discussion est ouverte sur l'article 12 qui est conçu comme suit:

La présente Convention ne s'applique qu'à l'interdiction des ressortissants d'un des Etats contractants ayant leur résidence sur le territoire d'un de ces Etats.

Le Président rappelle la proposition que M. Roguin a faite relative à l'article dernier du projet sur la tutelle des mineurs. Il aimerait à y revenir. M. Roguin estimait qu'il n'y avait aucune raison pour faire dépendre l'application du traité du fait de la résidence habituelle dans un des pays contractants. La Conférence a partagé l'avis de M. Roguin et, à une forte majorité, a voté la suppression de la résidence habituelle en y substituant somme seule condition pour l'application du traité, le fait que le mineur soit ressortissant d'un des Etats contractants.

On a fait observer ensuite de plusieurs côtés que la clause générale telle que la Conférence l'a amendée dans la séance du 13 juin soulèverait de graves difficultés. Si l'on suppose un mineur français résidant en Angleterre et possédant des biens en Allemagne, il est possible que le tuteur institué selon la lex loci en Angleterre et le tuteur désigné d'après la loi nationale du mineur viennent tous deux réclamer les immeubles sis en Allemagne.

Pour obvier à de pareilles difficultés le Président propose d'ajouter à l'article 9 du projet de Convention sur la tutelle des mineurs un alinéa, qu'on pourrait rédiger comme suit:

„Toutefois les articles 7 et 8 de la présente Convention s'appliquent à tous les mineurs ressortissants des Etats contractants."

M. Roguin suppose le cas d'un mineur allemand, résidant en Angleterre et possédant des biens en Belgique. Si maintenant la Convention n'est applicable que sous la condition de la résidence dans un des Etats contractants, l'autorité belge ne serait pas obligée de remettre la constitution de la tutelle, par rapport aux biens, aux autorités allemandes. Elle y serait obligée si l'on fait tomber la condition de la résidence.

M. Dungs délare qu'il appuie la manière de voir du Président parce qu'il désire absolument éviter les conflits.

M. Roguin dit que la chose la plus importante est d'exprimer clairement le résultat que l'on veut atteindre.

Le Président constate que l'on désire en effet reconnaître la compétence des autorités anglaises dans le cas posé comme exemple.

M. Schumacher, Président de la Commission déclare que la nouvelle rédaction proposée par le Président correspond parfaitement à la pensée de la commission, tant en ce qui concerne la tutelle des majeurs, qu'en ce qui regarde la tutelle des mineurs.

Le Président observe qu'il faudra mentionner quatre articles dans le nouvel alinéa que l'on ajoutera à l'article 12, à savoir les articles 4, 5, 6 et 7.

M. Beichmann pense qu'il y a des différences de fond entre les dispositions de l'avant-projet sur la tutelle des mineurs et de celui sur la

tutelle des majeurs. Notamment les articles 6 et suivants ne correspondent pas tout à fait avec ceux de l'avant-projet sur la tutelle des mineurs. Il pense donc qu'il vaudra mieux de ne pas formuler une rédaction nouvelle à présent, mais seulement de prendre acte des observations qui sont faites.

M. Renault est d'avis qu'il s'agit de prendre d'abord parti dans la matière de la tutelle des mineurs puisque cette matière est destinée à former l'objet d'un traité.

M. Renault ne conteste pas l'opportunité de la proposition du Président. Il désire cependant faire une observation.

La proposition tend à déclarer applicables à tous les ressortissants des Etats contractants les articles 7 et 8 de l'avant-projet sur la tutelle des mineurs. En ce qui touche les articles 2, 3, 4 et 5 l'application sera plus restreinte, ce qui est naturel parce que ces articles supposant des rapports entre les autorités des deux pays ne peuvent s'appliquer que si ces autorités sont également soumises à la Convention. Mais il n'en est pas de même de l'article 6. Il y a par exemple un mineur français qui est domicilié en Angleterre et qui possède des biens en Allemagne; la tutelle est constituée en France. Si maintenant l'Angleterre n'accepte pas cette tutelle, cela ne regarde pas la Convention. Mais il est absolument en conformité avec l'esprit de la Convention que la tutelle une fois régulièrement instituée en France soit reconnue en Allemagne.

M. Kriege déclare partager complètement l'opinion de M. Renault qu'il est conforme à l'esprit de la Convention de reconnaître la tutelle instituée sur un mineur ressortissant d'un des Etats contractants d'après sa loi nationale, même quand il n'y a pas sa résidence habituelle. C'est un résultat qui déjà maintenant correspond aux lois allemandes. Toutefois, pour des considérations pratiques il n'est pas recommandable d'exprimer cette idée par une disposition expresse, attendu que dans certains cas, il pourra être assez difficile de dire d'une manière définitive, si l'Etat de la loi nationale a institué une tutelle ou s'il a l'intention de le faire. En présence de cette circonstance, il n'y a pas lieu de citer l'article 6 dans l'article 9, alinéa 2 du projet concernant la tutelle des mineurs.

M. Renault trouve l'observation que vient de faire M. Kriege très importante et désire qu'elle soit consignée au procès-verbal.

Le Président expose ensuite que dans l'article 7 du projet de Convention concernant la tutelle des mineurs il faut tenir compte de la modification faite, sur l'initiative de M. de Martens, au sujet de l'article 4 des dispositions relatives à la tutelle des majeurs. En substituerait donc les mots: „seront prises“ à ceux de: „pourront être prises“ en changeant ainsi la faculté en une obligation.

Les propositions du Président par rapport aux articles 7 et 9 du projet de Convention concernant la tutelle des mineurs sont adoptées.

En ce qui concerne l'article 12 des dispositions relatives à la tutelle des majeurs, le Président donne l'avis de suivre la rédaction de l'article 9 sur la tutelle des mineurs, dans la mesure du possible.

La Conférence adopte cette manière de voir,

M. Schumacher, en sa qualité de Président de la Commission, propose, puisque l'on a amendé le projet sur la tutelle des mineurs en deux points, de faire suivre le mot „consulaire" dans l'article 2 de ce projet par les mots „autorisé par la loi" et d'y supprimer les mots: „si elle l'autorise à cette fin et." C'est une question de pure rédaction. Le Comité de Rédaction d'ailleurs l'a déjà acceptée.

Cette proposition est adoptée.

M. Schumacher propose ensuite à la Conférence d'adopter un vœu sur la tutelle des majeurs que l'on rédigera dans la forme adoptée pour le vœu concernant la faillite.

Cette proposition est adoptée.

La séance est suspendue à midi et sera reprise à $3^1/_2$ heures de l'après-midi.

La séance est réouverte à $3^3/_4$ heures.

On aborde l'échange des vues sur les propositions de la Troisième Commission concernant la

délivrance de certificats sur la législation en vigueur dans un Etat.*)

M. van den Bulcke commence par déclarer, comme l'ont fait beaucoup d'autres Délégués en ce qui concerne la faillite, qu'il est absolument sans instructions par rapport à la matière des certificats de coutume. Quant au projet émané de l'initiative de M. le Délégué d'Autriche, il le considère, à plusieurs égards, comme inacceptable pour son Gouvernement. Il critique notamment l'article 1er, dont il ne comprend pas bien la teneur quand il s'agit de la validité des lois. Il ne peut davantage approuver les articles 3, concernant les dispositions de loi directement applicables à un sujet juridique déterminé, et 4, relatif à la certification de la jurisprudence. Sous ces réserves, il croit qu'un accord sur la matière des certificats de coutume serait hautement désirable.

Le Président est d'avis que l'adoption du projet pourra mener à de graves difficultés. Il se borne à désigner le cas où il y aurait des doutes sérieux si une loi postérieure a implicitement abrogé une autre loi, ou bien si cette dernière est toujours en vigueur. Il serait alors extrêmement dangereux pour un Etat de donner un certificat, et M. Asser est convaincu que le Gouvernement des Pays-Bas ne voudra pas s'imposer l'obligation de délivrer ces certificats.

M. Schumacher, Président et Rapporteur de la Troisième Commission, répond qu'on a mis en évidence qu'il serait impossible pour les Etats de délivrer un certificat sur la non-existence d'une loi. Mais ce sont précisément ces certificats-là dont on a souvent besoin. Par exemple, les pays de droit français interrogent très fréquemment l'Autriche en vue de savoir quelles dispositions régissent en Autriche la capacité de la femme mariée. A une

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*) Voir l'annexe 2 à ce procès-verbal.

telle question on ne saurait répondre que par un certificat portant que des lois limitant la capacité de la femme mariée comme telle n'existent pas en Autriche.

Il est vrai qu'il peut souvent être difficile pour un Etat de certifier qu'une loi qui précédemment avait force n'en a plus. Le Président M. Asser a déjà fait ressortir qu'on peut être amené à empiéter sur le terrain des controverses et de l'interprétation quand il s'agit de décider si une disposition légale a été, oui ou non, abrogée par une disposition postérieure. Cependant, le présent projet ne tend point à contraindre l'Etat, dans l'espèce, à émettre un avis officiel. Conformément à la pratique actuelle du Ministère de la Justice Autrichien, le Gouvernement, dans un pareil cas, insérera au certificat les deux lois, la loi antérieure et la loi ultérieure. Ceux qui devront faire usage du certificat auront à se former eux-mêmes une opinion sur la force abrogatoire de la loi postérieure.

On a fait ressortir qu'on peut aussi bien obtenir les avis juridiques des avocats. Pourtant, on ne saurait nier que ces avis très souvent ne méritent qu'une confiance conditionnelle. M. Schumacher, dans sa carrière de fonctionnaire, a pu constater le cas où le même avocat français a émis sur la même question de droit, dans un délai très court qui n'avait rien vu se changer dans la matière, deux avis tout à fait contradictoires. L'on ne pourra jamais, à vrai dire, se passer entièrement de pareils avis privés, mais il ne convient pas qu'on soit, comme à présent dans la grande majorité des cas, forcé de s'y adresser.

Toutefois, il est fort malaisé d'indiquer la mesure que les Gouvernements devront observer en délivrant leurs certificats, notamment en ce qui concerne le renvoi à la jurisprudence constante de leurs tribunaux. Ce point mérite d'être pris en consciencieuse considération par les Gouvernements représentés. Si, dans une Conférence ultérieure, MM. les Délégués sont munis d'instructions de la part de leurs Gouvernements, on pourra arriver sans trop de peine à une entente sur cette question d'une grande importance.

M. Missir fait valoir que dans les cas où Gouvernements ne sont pas disposés à communiquer la teneur de la jurisprudence, ils pourront néanmoins indiquer les moyens par lesquels on peut se procurer ces renseignements. En outre, quand des motifs de nature politique empêcheraient les Gouvernements de faire eux-mêmes les communications désirées, ces motifs n'existeront pas pour les procureurs-généraux, qui connaissent la loi et la jurisprudence nationales tout aussi bien.

Le Président constate l'opinion unanime qu'il est hautement désirable de faciliter aux tribunaux la connaissance des législations étrangères. Mais il craint qu'il ne soit impossible de régler le point visé d'une manière efficace et par laquelle le but qu'on se propose sera atteint. Quand il s'agit de textes spéciaux, le juge pourra se les procurer sans l'aide d'un Gouvernement étranger, et dans cette hypothèse l'obligation serait donc superflue. Par contre, dans les cas où il est douteux quel est le droit existant par rapport à telle ou telle matière, le Gouvernement des Pays-

Bas persisterait assurément à s'abstenir de toute délivrance d'avis officiel. M. Asser croit que, si le but qui a inspiré le Délégué d'Autriche est atteint, cela ne se fera que grâce à l'initiative privée. Même abstraction faite des certificats dont il s'agit, M. Asser voit de plus en plus la nécessité d'une grande association internationale qui tiendra au courant du droit étranger les tribunaux et la science et qui se mettra à la disposition des autorités des différents Etats pour procurer les renseignements requis concernant le droit des autres Etats. Les certificats délivrés par une telle association, tout en n'ayant pas la valeur officielle qui appartiendrait à des certificats gouvernementaux, auraient le grand avantage de pouvoir entrer dans le fond des questions controversées. Ce n'est là cependant qu'une idée toute personnelle que M. Asser désire recommander à l'attention des honorables Délégués.

M. Renault tient à rappeler qu'en France il y a non seulement des revues qui s'acquittent de cette tâche, mais encore la Société de Législation Comparée qui publie régulièrement, depuis 1872, presque toutes les lois étrangères d'une importance générale en accompagnant la traduction de notices et de notes. Beaucoup de jurisconsultes français et étrangers participent à ce travail, fait avec le plus grand soin, qui fournit à la science et la pratique de précieux documents.

Par rapport à l'idée d'une association privée, émise par le Président, M. Renault fait observer que le Ministère de la Justice à Paris contient une très riche bibliothèque de législation étrangère, administrée par un Comité de législation étrangère qui dirige aussi la publication de la traduction des principaux Codes étrangers. Au Comité se rattachent un certain nombre de jurisconsultes, particulièrement au courant des législations et des langues étrangères, qui peuvent délivrer des certificats de coutume; ces certificats ont naturellement le caractère privé. On peut donc dire que, déjà en France, le but pour lequel M. Asser croit nécessaire de former une association nouvelle, est atteint.

Le Président répond à M. Renault que les autres pays ne s'adresseront pas au comité français pour être renseignés sur la législation d'un troisième pays. Ce sont seuls les jurisconsultes de ce pays-même qui pourront donner ces renseignements avec une sécurité parfaite.

M. Pierantoni remercie le Rapporteur d'avoir rappelé la motion qu'il a proposée en 1894 sur la nécessité de trouver un système pour acquérir la preuve des lois étrangères. Avant d'avoir fait cette proposition en sa qualité de Délégué d'Italie, il avait fait paraître une publication en faveur de cette idée et soumis à l'examen de l'Institut de Droit International un projet y relatif qui fut adopté dans la session de Bruxelles. Il reconnaît les services qu'ont rendus à la propagation de cette idée certaines revues, la Société de Législation Comparée, les traducteurs des différents codes; mais il reste encore assez de lacunes à combler. L'idée fondamentale des propositions précédentes de M. Pierantoni était de reconnaître aux présidents des tribunaux ou des cours le droit d'adresser, par l'intermédiaire du ministère public, des lettres rogatoires dans tous les cas où les parties

litigantes ne seraient pas d'accord sur la teneur d'une législation étrangère. Dans les relations diplomatiques on ne se refuse jamais la communication des lois ou des projets de loi, et même tous les Etats échangent entre eux des actes officiels et parlementaires. C'est pourquoi M. Pierantoni croit tant à la possibilité qu'à l'utilité de préparer un projet sur cette matière.

M. de Martens se range à l'avis du Président. Il croit que la pratique actuelle est que chaque Gouvernement qui désire savoir le texte d'une loi étrangère en demande par voie diplomatique la communication; mais il ne peut se figurer que, par exemple, s'il importe de connaître une loi pénale étrangère pour l'application d'un traité d'extradition, aucune obligation de produire les renseignements requis soit admise. D'une part, la pratique déjà existante suffit; d'autre part, jamais un Gouvernement ne pourrait s'expliquer sur les questions souvent très compliquées de la validité des lois. Dans les cas où l'on peut obtenir d'informations officielles, qu'on s'adresse aux avocats. M. de Martens est d'avis qu'une obligation comme la veut le projet ne peut pas être obtenue; toutefois il estime que les Etats signataires des traités projetés par la Conférence sont par là-même moralement tenus de se communiquer leurs lois de droit international privé.

M. de Hammarskjöld demande à poser une question au Rapporteur. Il sait bien qu'il n'entre pas dans l'intention du projet d'obliger les Gouvernements à donner eux-mêmes les certificats désirés et à prononcer ainsi leur propre opinion sur la législation en vigueur et sur la jurisprudence établie. Au contraire, le Délégué de Suède est convaincu que les Gouvernements pourraient charger une autorité quelconque de la délivrance de ces certificats. Mais il serait bien aise d'avoir au procès-verbal une explication authentique en ce sens.

M. le Comte de Selir appuie l'avis de M. de Martens. Il trouve aussi que la pratique déjà existante suffit, car les Gouvernements ne se refusent jamais à donner aux agents diplomatiques des certificats sur la législation en vigueur dans uu Etat, à moins qu'ils n'aient des raisons toutes spéciales pour un pareil refus. Quant à lui, il ne se rappelle pas, pendant toute sa carrière diplomatique, qu'un Gouvernement quelconque lui ait refusé de pareils documents.

M. Pierantoni rappelle que la Conférence a déjà reconnu la nécessité de créer pour les Etats l'obligation de se communiquer leurs lois, par l'article 7 du projet sur les successions. Après le problème de l'exécution des jugements étrangers, il n'en sait pas de plus important que celui de la preuve officielle des lois étrangères. Du reste, il pense que les Gouvernements qui vont se lier par des traités de droit international privé devront en même temps imposer des conditions plus difficiles aux futurs magistrats judiciaires.

Le Président constate qu'il n'est plus nécessaire, à son avis, de discuter les articles séparément, parce que tous ont déjà été traités.

M. Schumacher croit pouvoir se borner à constater que la question posée par M. de Hammarskjöld se trouve suffisamment résolue, en sens affirmatif, par l'alinéa 6 de son rapport.

Le Président répète que, pour sa part, il préfère un moyen terme, une association privée sous un contrôle des ministères des différents pays. Mais le présent projet servira en tout cas à attirer l'attention des Gouvernements sur ce point important. Il propose d'insérer dans le Protocole Final un vœu à ce sujet dans la forme adoptée pour le vœu en matière de faillite.

Cette proposition du Président est adoptée.

La Conférence passe à l'examen des propositions de la Première Commission sur

les conflits de lois et de juridictions en matière de divorce et de séparation de corps.*)

Personne ne désirant la parole sur l'ensemble de l'avant-projet, on procède à l'article 1 qui est ainsi conçu:

Les époux ne peuvent former une demande en divorce que si leur loi nationale et la loi du lieu où la demande est formée admettent le divorce l'une et l'autre.

Il en est même de la séparation de corps.

M. Pierantoni fait la déclaration suivante: „Je crois de mon devoir envers mon Gouvernement de faire une grande réserve. Le Ministre des Affaires Etrangères d'Italie n'a fait aucune observation sur le projet concernant le divorce qui lui a été communiqué par le Gouvernement des Pays-Bas, parce que l'Italie tout en ayant adopté dans son code le mariage civil, ne connaît pas le divorce. Mais du moment où le Gouvernement Néerlandais fut d'avis de faire régler encore la séparation de corps, je tiens à émettre comme mon opinion personnelle que l'on devait alors tenir bon compte des cas de nullité du mariage, notamment des nullités fondées sur l'article 107 du code italien, à cause de leur grande ressemblance avec le divorce. Du reste, je serais heureux si l'absence de règles sur cette matière n'est pas réputée par le Gouvernement Italien être un obstacle à la signature du projet. En raison de cette réserve, je m'abstiendrai de prendre part à la discussion.

M. Renault, Président et Rapporteur de la Première Commission, remarque que le point signalé par M. le Délégué d'Italie ne regarde pas le divorce, mais la nullité du mariage dont la Conférence n'a pas à s'occuper quant à présent.

M. de Martens estime que l'avant-projet de la Commission constitue une bonne base pour les discussions de la Conférence, mais, à cause du lieu intime entre la matière de la validité du mariage et celle du divorce et de la séparation, il doit réitérer ici toutes les réserves qu'il a faites par rapport au projet sur le mariage.

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*) Voir l'annexe 3 à ce Procès-verbal.

M. Renault, Rapporteur, fait observer à M. de Martens que les changements que la Commission a introduits dans l'avant-projet de la Commission Néerlandaise ont précisément eu pour but de satisfaire autant que possible aux désirs des pays qui, comme la Russie, réclament, pour des motifs d'ordre religieux ou autres, une plus grande influence sur leurs sujets établis à l'étranger et qui tendent à écarter la loi du lieu où les époux sont domiciliés.

L'article 1 est adopté sans appel nominal.

La discussion s'ouvre sur l'article 2:

Le divorce ne peut être demandé que si, dans le cas dont il s'agit, le divorce est admis à la fois par la loi nationale des époux et par la loi du lieu où la demande est formée.

Il en est de même de la séparation de corps.

M. Meili tient à exprimer aux Délégués des Etats scandinaves tous ses remercîments de ce qu'ils ont réussi à trouver la bonne formule pour réconcilier les deux principes de la lex patriae et de la lex domicilii. Il profite de l'occasion pour dire que cette solution est très heureuse, parce qu'elle écarte une injustice de l'ancien projet, qui demandait à tort une concordance entre la loi nationale et la loi du pays, même pour les causes de divorce ou de séparation.

L'article 2 est adopté sans appel nominal.

On passe à l'article 3:

Nonobstant les dispositions des articles 1er et 2, la loi nationale sera seule observée si la loi du lieu le prescrit ou le permet.

Le Président propose d'insérer après les mots: „la loi du lieu“ les mots: „où la demande est formée“. Si l'on ne répète pas ici ces mots empruntés à l'article 1er, il faudrait les rayer de l'article 2.

M. Renault n'a aucune objection contre cette addition.

La modification et l'article 3 ainsi modifié sont adoptés sans appel nominal.

Puis on aborde l'article 4:

La loi nationale indiquée par les articles précédents ne peut être invoquée pour donner à un fait qui s'est passé alors que les époux ou l'un d'eux étaient d'une autre nationalité, le caractère d'une cause de divorce ou de séparation de corps.

M. Schumacher déclare n'avoir pas d'objection contre la teneur de cet article, mais il prie le Rapporteur de vouloir bien appliquer la règle édictée par l'article 4 au cas suivant: l'un de deux époux catholiques, de nationalité autrichienne, commet un adultère. Après cet adultère, le mari devient Hongrois, et cette naturalisation entraîne de plein droit le changement de nationalité de la femme. Puis le mari demande le divorce devant un tribunal hongrois. La loi hongroise admet le divorce pour cause d'adultère, tandis que la loi autrichienne ne l'admet qu'entre des époux non-catholiques. Or, si la femme invoque l'article 4 du projet, le tribunal hongrois pourra-t-il déclarer que l'adultère, étant d'après la loi

autrichienne en général une cause de divorce, constitue aussi dans l'espèce une telle cause, nonobstant que, si les époux étaient restés Autrichiens, ils n'auraient pu divorcer comme étant catholiques?

M. Renault, Rapporteur, croit pouvoir donner pleine satisfaction au Délégué d'Autriche. Il n'hésite pas à dire que, dans l'hypothèse prévue par M. Schumacher, le tribunal hongrois ne devrait pas prononcer le divorce. Quand les époux étaient Autrichiens, le fait d'adultère qui s'est produit ne constituait pas pour eux une cause de divorce, puisque le divorce n'est pas admis pour des Autrichiens catholiques; peu importe que le divorce existe dans la législation autrichienne pour les protestants et les israélites. Ce qu'il faut envisager pour l'application de l'article 4, ce n'est pas si le fait constituait in abstracto une cause de divorce dans la législation qui était celle des époux lorsqu'il s'est produit, mais s'il constituait bien in concreto dans le cas particulier une cause de divorce. Ce que nous voulons précisément empêcher, c'est que, par un changement de nationalité, on puisse faire rétroagir la loi nouvelle de manière à donner au fait antérieur un caractère qu'il n'avait pas au moment où il a été commis. C'est ce qui arriverait si le tribunal hongrois, dans l'espèce prévue, prononçait le divorce en vertu de la loi hongroise à raison d'un fait qui s'est passé sous l'empire de la loi autrichienne. M. Renault peut constater que les membres de la Première Commission sont unanimes à approuver l'interprétation qu'il vient de donner de l'article 4 et qui est pleinement d'accord avec ce qui est dit déjà dans le rapport.

Le Président déclare partager absolument l'opinion de M. Renault. Il croit seulement que le mot „caractère“ est de nature à laisser un léger doute sur le sens de l'article.

M. Renault ne croit pas qu'on réussisse à trouver une meilleure expression. C'est après bien des tâtonnements que la Commission est arrivée à la rédaction actuelle.

M. Schumacher remercie le Rapporteur de son explication qui l'a contenté parfaitement.

L'article 4 est adopté sans appel nominal.

La discussion s'ouvre sur l'article 5:

La demande en divorce ou en séparation de corps peut être formée:

1° devant la juridiction compétente d'après la loi nationale des époux;

2° devant la juridiction compétente du lieu où les époux sont domiciliés. Si, d'après leur législation nationale, les époux n'ont pas le même domicile, la juridiction compétente est celle du domicile du défendeur. Dans le cas d'abandon et dans le cas d'un changement de domicile opéré après que la cause de divorce ou de séparation est intervenue, la demande peut aussi être formée devant la juridiction compétente du dernier domicile commun. Toutefois, la juridiction nationale est réservée dans la mesure où cette juridiction est seule compétente pour la demande en divorce ou en séparation de corps. La juridiction étrangère reste compétente pour un mariage qui

ne peut donner lieu à une demande en divorce ou en séparation de corps devant la juridiction nationale compétente.

M. Meili constate que l'adoption de cet article et l'adhésion éventuelle de la Suisse auraient pour résultat que les tribunaux suisses pourront prononcer le divorce entre étrangers sans avoir à tenir compte de la certification prévue à l'article 56 de la loi fédérale. En d'autres termes, cette disposition de droit international se trouverait alors abrogée entre les Etats contractants.

M. Renault fait observer à M. Meili que c'est l'article 7 de la Convention qui remplacera l'article 56 de la loi fédérale.

M. Feith ne comprend pas parfaitement le rapport entre la disposition du 1°, déclarant toujours compétente la juridiction nationale des époux, et la disposition à la fin du 2° qui réserve expressément la juridiction nationale dans la mesure où elle est seule compétente pour la demande dont il s'agit. La dernière prescription fait l'impression d'être superflue.

M. Renault, Rapporteur, concède que le rapport de ces deux prescriptions est difficile à comprendre à première vue. La juridiction nationale prévue sub 1° n'est aucunement restreinte. Dans le projet de 1894, la juridiction du domicile n'était pas restreinte non plus; on avait toujours le choix entre les deux juridictions. Dans le projet actuel, il n'nen est plus ainsi; à ses termes, la juridictions natinale ne reçoit jamais d'exception, mais elle peut écarter la juridiction du domicile. La pensée de l'article serait peut-être exprimée d'une façon plus claire si l'on avait prévu au 1° le cas où la juridiction nationale est seule compétente; mais cela ne pouvait se faire, puisque la juridiction du domicile dont la suppression est envisagée n'est mentionnée que plus tard dans l'article 5.

M. Roguin demande si la disposition du 1° crée une juridiction compétente nationale pour les ressortissants à l'étranger d'un Etat où une telle juridiction pour les demandes en divorce ou en séparation n'existe pas.

M. Renault répond que la disposition du 1° ne pourra nullement avoir un tel effet. Si la loi nationale n'établit pas de juridiction compétente pour les nationaux établis à l'étranger, il ne reste naturellement que la juridiction du domicile.

L'article 5 est adopté sans appel nominal.

On aborde l'article 6 qui est conçu comme suit:

Dans le cas où des époux ne sont pas autorisés à former une demande en divorce ou en séparation de corps dans le pays où ils sont domiciliés, ils peuvent néanmoins l'un et l'autre s'adresser à la juridiction compétente de ce pays pour solliciter les mesures provisoires que prévoit sa législation pour la cessation de la vie en commun. Ces mesures seront maintenues si, dans le délai d'un an, elles sont confirmées par la juridiction nationale; elles ne dureront pas plus longtemps que ne le permet la loi du domicile;

Le Président demande ce qui sera de droit si la loi du domicile limite la durée des mesures provisories à un terme inférieur à un an, par

exemple des six mois. Alors le délai d'un an prescrit par l'article ne peut être respecté.

M. Renault, Rapporteur, dit qu'il y a deux limitation de la durée des mesures provisoires: dans tous les cas, la limitation prescrit par la loi du domicile, et, pour le cas où cette première excèderait un an, la limitation prévue dans l'article 6 lui-même.

Sur la proposition de M. van den Bulcke, les mots „pour la cessation" sont remplacés par „en vue de la cessation".

L'article 6 ainsi modifié est adopté sans appel nominal.

On aborde l'article 8:

Le divorce et la séparation de corps, prononcés par un tribunal compétent aux termes de l'article 5, seront reconnus partout sous la condition que les clauses de la présente Convention auront été observées et que, dans le cas où la decision aurait été rendue par défaut, le défendeur ait été cité conformément aux disposition spéciales exigées par sa loi nationale pour reconnaître les jugement étrangers.

Seront reconnus également partout le divorce et la séparation de corps prononcés par une juridiction administrative, si la loi de chacun des époux reconnaît ce divorce et cette séparation.

M. Oliver y Esteller désire expliquer sa situaation vis-à-vis de cet article.

A son avis, la disposition a pour but d'obliger les agents de l'Etat espagnol à prêter leurs concours à un acte, tel que le divorce, qui est contraire non seulement aux lois de l'Espagne, mais encore aux conviction religieuses et sociales du peuple espagnol. Le principe de l'indissolubilité et de la perpétuité du mariage, célébré d'après la loi espagnole, canonique ou civil, sans distinction des catégories de personnes, nationaux ou étrangers, catholiqnes ou non, est en Espagne considéré d'une voix commune comme d'ordre public et conforme aux bonnes mœurs.

Le dernier alinéa de article 2 du projet d'une Convention pour régler les conflits de lois en matière de mariage n'est pas une garantie certaine et ferme, parce qu'il ne fait pas partie du projet sur le divorce lui-même et, par conséquent, ne sera pas applicable aux Etats qui participeront seulement à cette dernière Convention. En tout cas cet alinéa n'offre que'une garantie partielle ou incomplête pour sauvegarder les grands intérêts moraux et sociaux qui trouvent dans le susdit principe leur plus forte défense et protection. Voici, succinctement exposées, les plus importantes raisons qui forcent le Délégué d'Espagne à repousser la disposition de l'article 7 quant à la validité absulue et partout des divorces prononcés à l'étranger. Il prie le Président de prendre acte de cette déclaration.

Le Président donne acte au Délégué d'Espagne de sa déclaration.

M. Matzen remercie la Commission pour avoir reconnu dans l'article 5 que le divorce peut être décrété par une juridiction administrative; mais il regrette que dans l'article 7 elle ait introduit une large restriction par rapport à la reconnaissance dans les pays étrangers des décrets de divorce

rendus par voie administrative. Le Délégué de Danemark ne sait pas si cette restriction sera acceptable pour son Gouvernement, et ce n'est donc que sous cette réserve expresse à l'égard de la disposition finale de l'article 7 qu'il votera l'avant-projet d'une Convention sur le divorce et la séparation de corps.

M. Beichmann se rallie pour la Norvège à ce que vient de dire M. Matzen pour le Danemark.

M. de Hammarskjöld tient, à propos des observations de M. Matzen, à souligner la phrase suivante du rapport; „Des membres de la Commission ne sont pas partisans de la distinction ainsi faite par l'article 7 et sont disposés à accepter les décisions de toute juridiction compétente dans les pays contractants, mais ils ont dû céder à la résistance absolue de certains de leurs collègues."

M. Renault, Rapporteur, n'a pas, à proprement parler, à répondre à la déclaration de M. le Délégué d'Espagne. Il a expliqué dans son rapport la divergence de vues entre M. Oliver et la Commission. Il persiste à croire que cette divergence n'est pas si absolue et que, sur presque tous les points qui l'intéressent vraiment, l'Espagne reçoit satisfaction, soit par le projet actuellement en discussion, soit par le projet déjà voté sur le mariage. Sans doute, les deux projets ne forment pas un tout indivisible, mais M. Renault ne croit pas probable qu'un Etat signe le projet sur le divorce et la séparation de corps sans signer le projet sur le mariage. M. Oliver y Esteller ne voudrait pas que des Espagnols pussent divorcer; mais le cas ne peut se présenter, puisque l'application de l'article 1 de notre projet fera refuser le divorce aux Espagnols. Même s'ils changent de nationalité et si leur nouvelle législation admet le divorce, ils ne pourront divorcer, à raison de l'article 4, en invoquant un fait qui se serait passé pendant qu'ils étaient Espagnols. Enfin, le dernier alinéa de l'article 2 du projet sur le mariage permet aux autorités espagnoles de refuser de célébrer un mariage à raison de ce qu'un mariage antérieur n'est pas dissous à leurs yeux. Ce qui prouve que ces considérations ont leur valeur, c'est que M. Renault constate qu'elles sont acceptées par deux pays, l'Autriche et le Portugal, dont la législation sur ce point se rapproche de celle de l'Espagne. La Conférence peut donc espérer qu'à la réflexion le Gouvernement Espagnol ne refusera pas, à cause de l'article 7 d'accepter le projet.

Quant aux regrets exprimés par M. Matzen, comme par M.M. Beichmann et de Hammarksjöld, M. Renault peut dire, en son nom personnel, qu'il les partage. Il aurait vivement désiré que l'on ne distinguât pas entre les jugements proprement dits et les décisions administratives, qu'on reconnût la même autorité aux unes et aux autres. Il s'est incliné devant une opposition irreductible et il ose espérer que, après reflexion, cet article 7 ne sera pas un motif pour M. Matzen de conseiller à son Gouvernement de ne pas adopter le projet.

Quelle est, en effet, l'hypothèse normale qui intéresse particulièrement les Délégués scandinaves? C'est celle où le Roi prononce un divorce ou une séparation de corps entre deux de ses sujets. Sa décision est alors

reconnue partout. Il en est de même s'il a statué à l'égard d'époux établis sur son territoire dont la loi nationale admet un système analogue; par exemple, le Roi de Danemark a prononcé le divorce entre deux Suédois ou deux Norvégiens établis en Danemark. Les cas dans lesquels le Roi de Danemark ou le Roi de Suède et Norvège décident en matière de divorce entre d'autres étrangers établis sur leur territoire sons dès à présent rares en fait; ils le deviendront de plus en plus avec la règle déjà votée de l'article 5, 2°, qui permet à la loi nationale d'exclure la juridiction du domicile. D'après les explications données au rapport, la juridiction administrative est exclue pour les Allemands, les Belges, à raison du caractère de leur législation en cette matière; elle est exclue, comme toute autre juridiction du domicile, pour les Hongrois, les Espagnols à raison du caractère exclusif de leurs juridictions nationales. Le nombre des étrangers domiciliés dans un des pays scandinaves à l'égard desquels on peut concevoir qu'intervienne une décision administrative prononçant le divorce ou la séparation de corps devient donc extrêmement restreint. S'il y avait néanmoins une décision de ce genre, quel en serait l'effet? On ne doit pas dire qu'il est nul. Il est seulement vrai que le texte de la Convention n'oblige pas à reconnaître une pareille décision, il n'empêche nullement de le faire. Pour son compte personnel, M. Renault ne croit pas qu'on hésite en France à la reconnaître aussi bien que la décision de toute juridiction compétente en cette matière. Il lui est donc permis de dire que la disposition que regrette M. Matzen a des inconvénients beaucoup plus théoriques que pratiques; c'est pour cela qu'elle a été acceptée même par les membres de la Commission qui ne l'approuvaient pas; c'est pour cela aussi qu'elle n'empêchera pas, M. Renault en a le ferme espoir, les Gouvernements Danois, Suédois et Norvégien, d'accepter le projet.

Le Président regrette qu'on ait introduit cette réserve qui semble avoir choqué les Délégués scandinaves; de plus, en raison de l'extrême rareté des cas où elle sera applicable, comme vient de l'expliquer M. Renault, il lui semble qu'il n'était pas du tout nécessaire que la Convention se préoccupât de cette hypothèse.

M. le Comte de Selir prend bonne note de la déclaration que l'honoré Rapporteur M. Renault, vient de faire: qu'il ne croit pas probable qu'un Etat signe le projet sur le divorce sans signer le projet sur le mariage. En vue de cette déclaration, il estime que le dernier alinéa de l'article 2 du projet sur le mariage lui donne entière satisfaction même pour l'article 7 du projet en question, car il permet aux autorités portugaises de refuser de célébrer un mariage à raison de ce qu'un mariage antérieur n'est pas dissous à leurs yeux. Il croit que le projet, avec toutes les garanties qui à présent y sont apportées, pourra être accepté par le Portugal.

L'article 7 est adopté sans appel nominal.

On procède à l'article 8 qui est conçu en ces termes:

Si les époux n'ont pas la même nationalité, leur dernière législation commune devra, pour l'application des articles précédents, être considérée comme leur loi nationale.

M. Töry rappelle qu'il a fait dans la Commission ses réserves concernant l'article 8, dont le Président de cette Commission a pris acte dans son excellent rapport. Le Délégué de Hongrie se permet de se référer simplement à ces réserves.

L'article est adopté sans appel nominal, de même que l'article 9:

La présente Convention ne s'applique qu'aux demandes en divorce ou en séparation de corps formées dans l'un des Etats contractants, si l'un des plaideurs au moins est le ressortissant d'un de ces Etats.

Aucun Etat ne s'oblige, par la présente Convention, à appliquer une loi qui ne serait pas celle d'un Etat contractant.

Les dispositions finales sons réservées, comme il a été fait pour les autres projets.

Sur la proposition du Président, cette première lecture du projet sur le divorce, dont une revision par le Comité de Rédaction lui semble toute superflue, est considérée comme lecture définitive.

Avant de terminer la discussion de ce projet, le Président tient à adresser ses remerciments les plus chaleureux à la Première Commission pour le temps et le zèle qu'elle a consacrés à son œuvre qui est une des plus importantes de la Conférence. Ces remerciments reviennent en grande partie à l'éminent et infatigable Président et Rapporteur de la Commission, M. Renault, dont les rapports profiteront dans une très large mesure à la science et aux tribunaux. Par ce travail M. Renault a certainement rendu un service éminent à l'œuvre de la Conférence. Mais encore a-t-il le grand mérite d'avoir indiqué, dès avant la première réunion de la Conférence, dans une conversation particulière avec le Président, que si la Conférence commençait par discuter la théorie générale, comme on en avait d'abord l'intention, elle n'intéresserait pas suffisamment le public. Alors on a changé de système. M. Renault a, de plus, indiqué la matière du mariage comme étant surtout de nature à éveiller l'intérêt général. C'est donc à M. Renault que la Conférence doit non seulement ses deux projets principaux, mais encore la méthode qui a sauvé son œuvre. Le Président propose que la Conférence vote ses remerciments profondément sincères à M. Renault.

La Conférence applaudit cordialement et chaleureusement à cette proposition.

M. Renault remercie le Président des paroles trop aimables qu'il a bien voulu lui adresser et de la manière dont la Conférence a bien voulu se joindre à lui. A présent il incombe aux Délégués de déterminer leurs Gouvernements à accepter les projets de la Conférence. „Si, par impossible, on n'arrive pas à ce résultat que nous désirons tous, nous pouvons penser que nos travaux ne resteront pas inutiles; nous garderons aussi le souvenir de ces semaines de cordiale collaboration pendant lesquelles se sont noués entre nous des rapports d'estime et d'affection. Je n'oublierai jamais, pour mon compte, la grande bienveillance qui m'a été témoignée et qui m'a rendu si agréable la tâche de Président et de Rapporteur".

Le Président fait savoir que le Délégué de Norvège a déposé une proposition tendant à modifier l'article 11 de la Convention sur les succes-

sions, relatif à son application. En concordance avec l'avis de M. Renault, il propose que cette proposition soit examinée, immédiatement après la séance, par une commission composée de MM. Renault, de Martens, Schumacher, Pierantoni, Roguin et Beichmann.

Ensuite, le Président donne lecture de l'avant-projet d'un Protocole Final de la Conférence, dont le préambule a été rédigé par une commission composée du Président, des Vice-présidents, et des Présidents de Commission.

Cet avant-projet est discuté, et on y apporte quelques modifications.

M. Meili estime qu'il serait désirable de supprimer dans les intitulés de la 3ième et de la 4ième Convention les mots „relative à" et d'y substituer une formule qui établirait la conformité de ces intitulés avec ceux des deux autres Conventions. Une discussion s'engage sur cette question.

Le Président er M. Feith sont d'avis que la Convention sur la tutelle des mineurs a pour but de combler une lacune, plutôt que de régler des conflits de lois.

M. Lainé appuie, ainsi que M. Renault, la proposition de M. Meili; il fait en outre observer que la Convention sur la tutelle contient des dispositions de juridiction gracieuse.

La proposition de M. Meili est adoptée.

La troisième Convention aura donc pour intitulé: „Projet d'une Convention pour régler les conflits de lois et de juridictions relativement à la tutelle des mineurs"; la quatrième Convention: „Projet d'une Convention pour régler les conflits de lois relativement aux successions, aux testaments et aux donations à cause de mort."

La séance prochaine est fixée au lundi 18 juin à $9^1/_2$ heures du matin.

La séance est levée à $5^1/_2$ heures.

Le Président:
Asser.

Le Premier Secrétaire:
J. J. Rochussen.

Les Secrétaires:

Beelaerts de Blokland. *T. R. J. E. Stoop.*
C. van Vollenhoven. *H. van Karnebeek.*

Annexe 1 au Procès-verbal N° 8.

Rapport de la troisième Commission*) sur un avant- projet de dispositions concernant la tutelle des majeurs.

I.

Conformément au vœu exprimé par la Conférence, la Troisième Commission s'est appliquée à examiner et établir les bases d'un avant-projet concernant la tutelle des majeurs.

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*) Cette Commission était composée de MM. Schumacher, Délégué d'Autriche, Président; Beichmann, Délégué de Norvége; Ort, Délégué des Pays-Bas; Missir, Délégué de Roumanie, Rapporteur.

Même si un parail avant-projet n'était pas soumis à la délibération actuelle de la Conférence, il pourra être utile à l'œuvre de la codification pour former le point de départ des délibérations ultérieures.

La tâche de la Commission a été, en trés grande partie, facilitée par les travaux de l'Institut de Droit international. Nous avons eu en vue et suivi de très près le Règlement sur la tutelle des majeurs adopté en 1895 (vol. XIV de l'Annuaire).

La tutelle des majeurs, considérée dans son aspect international, présente surtout des difficultés quand il s'agit des personnes domiciliées ou ayant leur résidence habituelle à l'étranger. Quant à celles qui habitent le territoire de l'Etat dont elles sont des ressortissants, leur mise sous tutelle ne peut donner lieu qu'à un conflit de législation très léger, à savoir l'effet que doit avoir à l'étranger la sentence qui établit leur interdiction. A cet égard le droit international codifié n'aura qu'à suivre la règle qui est déjà observée d'une manière presque constante dans la jurisprudence de la plupart des Etats. Les décisions qui prononcent la mise sous tutelle, sous curatelle ou l'addition d'un conseil judiciaire ne comportent, par leur nature, aucune exécution sur les biens. N'ayant donc rapport qu'à la capacité de la personne, leur force exécutoire n'est pas en jeu et on ne les considère qu'au point de vue de leur force probatoire. En conséquence on est généralement d'accord à leur reconnaître de l'effet international sans aucune révision préalable et sans qu'elles soient parées d'exéquatur. Il y a alors tout au plus à considérer la question des formes de publicité, édictées par les différents pays dans l'intérêt public.

Bien plus complexe se présente l'hypothèse des personnes ayant leur résidence en dehors du territoire de leur Etat.

Dans cette hypothèse encore, on serait tenté d'obtenir l'application internationale des lois personnelles qui protègent l'individu. Que la personne trouve partout à l'étranger la protection qui lui est due par devant toute autorité étrangère, mais que cette protection lui soit accordée selon sa loi nationale. Qu'on distingue donc la compétence législative de la compétence judiciaire. La Commission a examiné avec grand soin la possibilité d'une pareille solution et elle a dû s'arrêter devant un obstacle, à son avis, infranchissable.

Il ne s'agit pas seulement de l'objection qu'on a faite concernant la difficulté que doivent recontrer les tribunaux d'un pays de connaître les lois étrangères. Il y a une difficulté bien autrement grave.

En matière de protection des majeurs, la loi est appelée à accomplir une double mission: un jugement à porter sur l'état des personnes et, en second lieu, l'emploi d'une mesure tutélaire.

Or, il se trouve que sur ce second point les lois positives varient et que différentes dispositions de chaque législation font en parties corps commun avec les lois de procédure. Elles y ont au moins des racines qu'on ne peut séparer. Telle institution tutélaire implique une attribution de compétence de l'autorité judiciaire, pendant qu'elle manque complètement dans d'autres Etats où elle est remplacée par un autre système également joint aux lois

de procédure. Pour ne citer qu'un seul exemple, l'Autriche ignore le conseil judiciaire et le conseil de famille, pendant que la France ne connaît pas l'Obervormundschaftsbehörde avec ses vastes attributions.

On comprend aisément l'application de la loi étrangère quand la mission de la justice est réduite à déclarer et sanctionner la situation des rapports juridiques soumis à sa décision. Mais dans le cas de la tutelle des majeurs, il s'agit d'une mission bien plus ample.

La loi attribue au juge la mission de modifier une situation et de mettre en mouvement et faire fonctionner d'une manière suivie certaines institutions juridiques établies par elle.

La loi lui attribue donc la compétence de créer un nouvel état de choses d'appeler à la vie un régime durable, de faire fonctionner un organisme de la vie civile.

Or, il est évident qu'imposer au juge d'appliquer une loi étrangère à cette fonction permanente de la vie civile, ce serait dépasser la juste limite dans laquelle la loi personnelle de l'étranger est généralement appelée à le suivre.

Ce serait inviter le régime de la loi étrangère à s'avancer sur un terrain où il lui serait absolument impossible de se maintenir, du moins à l'égard de tous les points sur lesquels la loi a trait à la procédure.

Quand-même le juge aurait la plus parfaite connaissance de la loi étrangère et il serait encore dans l'impossibilité d'agir, faute d'éléments nécessaires afin de pouvoir toujours constituer l'organisme dont il s'agit.

Ce sont là les considérations pour lesquelles la Commission est tombée d'accord sur le principe qu'en matière de tutelle des majeurs, la compétence législative ne peut pas facilement et entièrement être séparée de la compétence judiciaire.

S'il s'agit donc de pourvoir à la tutelle d'un majeur résidant à l'étranger, il n'y aurait qu'à se décider entre le régime national et le régime de la loi locale pour les deux compétences à la fois, sauf quelques déviations partielles de cette rigoureuse coïncidence.

Nous avons eu à examiner les objections qu'on a faites contre le régime de la loi personnelle.

Il nous a semblé que ces objections se rapportent plutôt à l'hypothèse, précédemment examinée, et qu'elles ne sont pas de nature à nous faire dévier de la voie tracée par le Règlement de l'Institut.

On doit donc d'abord essayer d'obtenir des autorités compétentes de son pays et conformément à sa loi nationale la protection tutélaire à laquelle la personne a droit. D'accord avec l'Institut, nous avons considéré la tutelle des majeurs comme une mesure de protection qu'on établit en premier lieu dans l'intérêt de l'individu. Le régime de la loi personnelle sera donc la règle générale.

Ce n'est que dans certains cas exceptionnels que nous aurons recours au régime tutélaire de la loi locale.

II.

Articles 1, 2 et 3. Les trois premiers articles contiennent les dispositions qui forment la règle générale de l'avant-projet.

Le premier établit le régime de la loi nationale. Le second indique la compétence judiciaire des autorités nationales. Le troisième article prévoit l'effet international de la sentence sur l'interdiction.

Quoique nous ayons considéré le terme juridique de l'interdictiou dans le sens le plus vaste pour le rapporter en général à toutes les mesures tutélaires qu'on peut prendre vis-à-vis d'un majeur, il nous a semblé que les textes gagneraient de précision si l'on mentionnait en même temps, dès le début, la mise sous curatelle et le conseil judiciaire, comme cela avait été proposé à l'Institut par notre éminent collègue, M. Lainé.

En ce qui concerne les formes de publicité qui doivent être remplies pour rendre opposable la sentence sur l'interdiction, notre honorable collègue, M. Beichmann Délégué de Norvège, a proposé de restreindre leur nécessité, dans les autres Etats, aux deux cas suivants: 1° quand l'interdit aura pris sa résidence habituelle dans le pays étranger et 2° quand l'interdit possède des immeubles dans ce pays; mais cette proposition n'a pas été acceptée par la Commission.

Suivent ensite les règles qui, par exception, devraient former aussi l'objet d'un régime conventionnel entre les Etats, en ce qui concerne la tutelle des personnes résidant à l'étranger.

Article 4. Il était tout d'abord nécessaire de permettre aux autorités locales de la résidence de l'étranger de prendre les premières mesures provisoires, exigées par la situation de la personne et de ses intérêts.

Article 5. L'autorité locale saisie d'un cas d'interdiction, soit par les mesures provisoires qu'elle a dû prendre, soit par une demande en interdiction, n'aura pas à donner immédiatement suite à la procédure d'interdiction. Elle aura à surseoir pour essayer de provoquer les autorités compétentes, selon la loi nationale de l'étranger, à se prononcer à ce sujet conformément à la règle générale.

L'autorité locale sera donc obligée de communiquer le cas aux autorités nationales de l'étranger, tout en leur indiquant le terme convenable du sursis qu'elle a admis.

Article 6. Quel résultat peut avoir cette démarche?

Il y a d'abord à prévoir une déclaration d'incompétence de la part des autorités nationales.

La situation est très claire dans ce cas. L'autorité locale pourra donner suite à la procédure d'interdiction sans avoir à craindre aucun conflit possible.

Ou bien, il y a un résultat négatif, motivé par l'application de la loi nationale: les autorités du pays étranger n'ont pu procéder à l'interdiction, faute d'une demande introductive ou parce que cette demande n'était pas régulière quant à sa forme ou à la qualité du demandeur; soit enfin que la procédure ayant été suivie, les autorités compétentes ont repoussé la demande comme n'étant pas fondée en fait.

Un pareil résultat, quoique négatif, nous a cependant semblé être de nature à exclure la compétence de l'autorité locale. Elle ne doit pas se mettre en conflit avec la décision légale des autorités compétentes, mais elle aura, au contraire, à donner avis à la partie intéressée de se conformer à cette décision ou de recommencer la procédure, conformément aux exigences de la loi nationale de l'étranger.

Nous avons donc cru devoir limiter la compétence exceptionnelle au cas de l'incompétence des autorités nationales et à celui où le résultat négatif ne provient pas de l'application de la loi, mais bien d'un motif quelconque de fait.

Nous avons en ceci dévié de l'avis de l'Institut, qui établit la compétence locale pour toute cause quelconque d'inaction de la part des autorités nationales (voir l'art. IV du Règlement).

Il est bien entendu que l'autorité locale aura à apprécier si elle se trouve en face d'un empêchement de fait, si le terme du sursis s'est écoulé sans qu'il y ait aucune réponse à la communication faite ou s'il faut, au contraire, surseoir encore jusqu'à un nouveau terme.

Articles 7, 8 et 9. La compétence de l'autorité locale ayant été établie conformément aux dispositions qui précèdent, il y a lieu d'envisager quelles en seront les conséquences.

La procédure à suivre pour instruire la demande en interdiction ne peut être que celle de la loi locale. Il est donc superflu de prévoir expressément (article VII premier alin. du Règlement de l'Institut), ce qui est de droit.

Mais en dehors de la question de la procédure à suivre, on devait se rapporter à la loi nationale de l'étranger pour tout ce qui n'est pas en connexité inséparable avec le régime de la loi locale.

C'est pourquoi la Commission a admis l'idée exprimée dans le second alinéa de l'article VII du Règlement de l'Institut, d'avoir recours aussi à la loi nationale de l'étranger, soit quant au droit de demander l'interdiction (article 7) soit quant à la levée de l'interdiction (article 9). La Commission, d'accord avec l'Institut, a en outre admis le régime exclusif de la loi nationale en ce qui concerne les causes de l'admissibilité de l'interdiction (article 7 second alinéa.)

Ce sont là les limites du régime partiel que nous avons cru devoir admettre en faveur de la loi nationale.

La Commission n'a pas cru devoir admettre la règle, proposée par l'Institut, de faire régir par la loi nationale aussi les effets de l'interdiction établie par l'autorité locale. Ces effets font corps et âme avec le régime tutélaire. Il nous a semblé que l'on ne pourrait pas, sans inconvénients, les séparer du régime de la loi locale, comme cela a été expliqué au commencement de notre rapport.

La Commission a même été d'avis qu'il faut préciser la conséquence inévitable de cette connexité, qu'une fois l'admissibilité de l'interdiction établie selon a loi nationale de l'étranger, son régime cesse et ne gouverne pas la mesure tutélaire qu'on aura à appliquer; au contraire, c'est selon

la loi locale qu'on doit décider, si c'est l'interdiction proprement dite, la curatelle ou le conseil judiciaire qu'on établit et organise pour le majeur mis sous tutelle (art. 7 second alin. et art. 8 premier alin.).

Il est bien entendu pourtant que les effets de l'interdiction, prévus par l'art. 8, ne concernent que la capacité civile de la personne et n'ont aucun rapport avec son état quant au droit public.

Article 10. La Commission a été d'opinion de marquer, sur un autre point de vue encore, le caractère exceptionnel de la tutelle organisée conformément à la loi locale, en admettant qu'elle pourra être remplacée par une tutelle constituée selon la loi nationale de l'étranger.

Ce principe n'a été reconnu qu'avec deux tempéraments différents. Pour que la préférence du régime de la loi nationale ait lieu, il faut que l'interdit ne relève plus de la juridiction locale et que la compétence judiciaire des autorités nationales puisse être invoquée à raison du changement de sa résidence dans le pays auquel il appartient.

En outre, ce changement ne devrait s'opérer qu'avec la mesure transitoire, que la loi locale soit celle qui décidera à quel moment prendra fin la tutelle qui a d'abord été organisée sous son propre régime.

Article 11. Nous avons préféré de relever d'une manière incisive l'unité du régime tutélaire, en précisant, conformément à ce qui a été dit dans l'avant-projet sur la tutelle des mineurs, que les exceptions concernant les immeubles ne s'appliquent que dans le cas où la loi de leur situation établit un régime foncier spécial.

Article 12. A peine était-il nécessaire de dire que les stipulations d'un régime conventionnel ne seront applicables que pour les ressortissants des Etats contractants, en tant qu'ils résident sur leurs territoires respectifs.

En conséquence la Commission soumet à la Conférence les résolutions suivantes:

Article 1.

L'interdiction — y compris la mise en curatelle ou la dation d'un conseil judiciaire — est réglée par leur loi nationale.

Article 2.

Sauf les cas prévus aux articles suivants, l'interdiction ne peut être prononcée que par les autorités compétentes de l'Etat duquel ressortit la personne à interdire.

Article 3.

L'interdiction prononcée par les autorités compétentes de l'Etat duquel ressortit la personne interdite produira ses effets dans tous les autres Etats sans qu'l soit besoin d'un exéquatur.

Toutefois les mesures de publicité prévues par la loi locale pour l'interdiction des nationaux seront également appliquées à l'interdiction d'un étranger si la loi du lieu l'exige.

Article 4.

Si celui qui est à interdire a sa résidence à l'étranger, les autorités du lieu pourront prendre toutes les mesures provisoires pour protéger sa personne et ses intérêts.

Article 5.

Dans le cas prévu par l'article précédent ainsi que toutes les fois que les autorités du lieu de la résidence d'un étranger seront saisies d'une demande en interdiction, elles devront donner communication aux autorités de l'Etat intéressé des mesures qui ont été prises ou de la demande introduite. En donnant cet avis elles indiqueront un délai convenable afin qu'on procède à l'interdiction conformément à la loi nationale.

Article 6.

Si les autorités nationales de l'Etat duquel ressortit l'étranger ne donneront suite à l'interdiction pour un motif d'incompétence ou pour toute autre cause qu'un motif prévu par leur loi, les autorités du lieu de résidence de l'étranger deviennent compétentes pour prononcer l'interdiction.

Article 7.

Lorsque les autorités étrangères sont compétentes conformément à l'article précédent, la demande en interdiction peut être formée par les personnes ou les autorités qui ont le droit de l'introduire, soit d'après la loi nationale, soit d'après la loi de la résidence.

Elles ne peuvent donner suite à la demande que pour les causes admises par la loi de la patrie, mais elles auront à appliquer l'interdiction proprement dite, la mise en curatelle ou l'adjonction d'un conseil judiciaire conformément à la loi du lieu.

Article 8.

Dans les cas prévus par les articles 6 et 7 l'administration de la personne et des biens de l'interdit est organisée conformément à la loi du lieu et les effets de l'interdiction seront régis par la même loi.

Quant aux effets que l'interdiction produira dans les autres Etats, les dispositons de l'article 3 seront applicables.

Article 9.

L'interdiction établie conformément aux dispositons de l'artile 6 pourra être levée non seulement pour les causes admises par la loi du lieu, mais aussi pour des motifs admis par la loi nationale de l'interdit.

La demande peut être formée par les personnes ou les autorités qui sont compétentes d'après l'une ou l'autre des deux lois,

Article 10.

Si l'interdit prend sa résidence habituelle dans l'Etat duquel il ressortit, l'existence de la tutelle établie conformément aux dispositions de l'article 8 n'empêche pas de constituer une nouvelle tutelle par l'application de l'article 1.

Il sera le plus tôt possible donné information de ce fait au Gouvernement de l'Etat on l'interdiction aurait été d'abord prononcée. Ce Gouvernement en informera soit l'autorité qui aura organisé la tutelle (curatelle) soit, si une telle autorité n'existe pas, le tuteur (curateur) lui-même.

La législation de l'Etat où l'ancienne tutelle était déjà organisée décide quand cette tutelle prend fin dans le cas prévu par le présent article.

Article 11.

Les dispositions qui précèdent recevront leur application sans qu'il y ait à distinguer entre les meubles et les immeubles de l'incapable; sauf l'exception quant aux immeubles placés par la loi de leur situation sous un régime foncier spécial.

Article 12.

La présente Convention ne s'applique qu'à l'interdiction des ressortissants d'un des Etats contractants ayant leur résidénce sur le territoire d'un de ces Etats.

Le Rapporteur: *P. Th. Missir.*

Le Président: *Schumaeher.*

Annexe au rapport de la IIIième Commission.

Texte du projet de Règlement international sur la tutelle des majeurs, adopté en séance du 12 août 1895 par l'Institut de Droit international.

(Annuaire XIV pages 163—165.)

I.

L'interdiction des majeurs est régie par leur loi nationale.

II.

En principe l'interdiction ne peut être prononcée que par les autorités compétentes du pays auquel la personne à interdire appartient par sa nationalité.

Les autorités du pays où elle réside doivent toutefois ordonner toutes mesures conservatoires ou provisoires, soit quant à la personne, soit quant aux biens.

III.

L'interdiction prononcée par les autorités compétentes du pays d'origine produit son effet dans tout autre pays sans qu'il soit besoin d'exéquatur.

Toutefois, les autorités étrangères ont le droit d'en subordonner, sur leur territoire, l'effet vis-à-vis des tiers à des mesures de publicité analogues à celles que prescrit la loi locale pour l'interdiction des nationaux.

IV.

Par dérogation au principe de l'article II, toutes les fois que les autorités du pays d'origine d'un étranger ne peuvent pas, pour une cause

quelconque, statuer sur la demande d'interdiction, celles du pays où cet étranger réside deviennent compétentes pour prononcer l'interdiction. En dehors de ce cas, ces dernières autorités sont tenues de se declarer incompétentes, même d'office.

V.

Toutes les fois que, d'après l'article IV, les autorités de la résidence sont saisies d'une demande en interdiction d'un étranger, elles doivent, avant de statuer, la porter à la connaissance de l'agent diplomatique ou consulaire d'Etat intéressé, en lui indiquant un délai pour présenter contre la demande les observation ou exceptions qu'il jugerait opportunes.

VI.

L'agent diplomatique ou consulaire, avant de répondre, prend l'avis des autorités compétentes (notamment du ministère public) du dernier domicile du défendeur dans son pays d'origine.

VII.

Lorsque des autorités étrangères sont compétentes pour statuer sur une demande d'interdiction; elles suivent pour l'instruction de l'affaire la même procédure que s'il s'agissait d'une personne du pays.

La demande en interdiction peut être formulée par les personnes ou les autorités qui ont le droit de l'introduire, soit d'après la loi nationale, soit d'après la loi de la résidence.

Elles ne peuvent prononcer l'interdiction que pour les causes admises par la loi nationale de la partie, et l'interdiction produit les effets que lui attribue cette loi.

L'administration de la personne et des biens de l'interdit est organisée par les autorités étrangères conformément à la loi du lieu.

La surveillance de l'incapable est confiée, autant que possible, aux personnes qu'y appelle la loi dudit incapable, encore qu'elles n'y aient pas un droit absolu d'après la loi locale.

VIII.

Les dispositions qui précèdent recevront leur application sans qu'il y ait à distinguer entre les meubles et les immeubles de l'incapable.

Annexe 2 au Procés-Verbal N° 8.

Rapport de la Troisième Commision*) sur un avant-projet de dispositions concernant la délivrance de certificats sur la législation en vigueur dans un Etat.

Dans la seconde séance plénière de la Conférence de 1894 le Délégué d'Italie a démontré l'urgence de trouver un sytème „pour acquérir la preuve des lois étrangers".

*) Cette Commission était composée de MM. Schumacher, Délégué d'Autriche, Président et Rapporteur; Beichmann, Délégué de Norvège; Ost, Délégué des Pays-Bas; Missir, Délégué de Roumanie.

La même opinion a de nouveau été manifestée dans le mémorie que les Gouvernements de Danemark et de Norvège ont présenté sur le Projet de Pogramme de la Troisième Conférence. Cependant la question y est envisagée d'un point de vue un peu différent. Selon l'avis de ces Gouvernements il ne s'agirait que de faciliter, autant que possible, en ce qui touche les matières qu'embrasse le Projet de Programme, l'obtention de certificats de loi.

Le Ministère de la Justice Autrichien a vivement applaudi à cette idée et le Délégué d'Autriche a présenté un projet relatif à cette matière.

Le projet dont la Trosième Commision a abordé l'examen dans sa séance du 7 juin cherchait à tenir compte des deux points de vue: le projet porte qu'en tout cas les Etats contractants sont tenus de délivrer des certificats officiels de quelles lois que ce soit (art. 1—5); ensuite le projet dispose, notamment par rapport aux matières ayant, sur la base établie par la Conférence de La Haye, fait l'objet de traités internationaux, que chaque Etat contractant sera obligé de communiquer d'office à tous les autres Etats contractants toutes les lois relatives au contenu de ces traités (art. 6).

La Commission n'a fait dans l'avant-projet que des changements de pure forme. Le système n'a pas changé. L'article 1 impose aux Etats l'obligation de délivrer les certificats officiels de loi; l'article 2 précise ce que comporte cette obligation, dont l'étendue est déterminée par les articles 3 et 4. L'article 5 détermine, par analogie des conventions existantes concernant les commissions rogatoires, les manières plus spéciales de la délivrance de ces certificats officiels.

Le projet ne se prononce pas sur la question de savoir quelles autorités dans l'Etat requis délivreront les certificats officiels de loi; selon les usances actuelles ce sont les ministères de la justice qui s'en chargent, mais aucun Etat ne sera empêché de désigner, pour des motifs dérivés de sa législation nationale, une autre autorité pour remplir ces fonctions.

Il va sans dire que l'obligation de donner ces certificats officiels sur le texte et la validité des lois existe seulement en ce qui concerne le droit écrit, notamment les lois proprement dites et non les décrets administratifs. L'obligation de donner ces certificats officiels, aussi quant à des lois ayant été en vigueur à une époque antérieure, ne se rapporte pas à des lois qui n'ont qu'une valeur purement historique mais à celles qui, quoique n'étant plus en vigueur, ont encore des effets sur certains rapports juridiques nés pendant que ces lois étaient encore valables.

C'était une question importante que de décider, dans quelle mesure l'Etat requis aura à se préoccuper d'un cas juridique spécial qui lui est soumis afin de le considérer d'après sa législation. Il faut laisser aux Etats le pouvoir de se faire renseigner sur la question quelles lois de l'autre Etat sont applicables à une certaine institution juridique ou un certain domaine du droit (alinéa 2 de l'article 2). Si l'Etat requérant, pour élucider davantage la question posée, veut mentionner un cas juridique spécial qui pourrait mieux la préciser, il n'y a lieu de s'y opposer. Toutefois, aucun Etat

ne sera tenu de s'expliquer sur l'application de sa loi au cas spécial indiqué, ni en général de donner des commentaires sur sa législation (alinéa 1 de l'article 4), réserve faite seulement de l'explication que peut avoir trouvée une disposition de loi dans la pratique constante des tribunaux.

Quant à la manière dont se délivreront ces certificats, la Commission estimait que la formalité d'une légalisation spéciale n'est pas nécessaire. La voie diplomatique qui est d'usance pour l'expédition de ces certificats garantit leur authenticité par sa nature même (dernier alinéa de l'article 5).

Peut-être soulèvera-t-on contre les dispositions susdites l'objection que — sauf l'article 6 dont du reste la nécessité et l'avantage vont de soi — elles n'énoncent que des choses évidentes qui sont déjà observées actuellement d'une façon assez générale entre les Etats contractants. Mais les bonnes expériences obtenues par rapport à la Convention de 1896, laquelle prescrit elle aussi nombre de règles que tous ces Etats observaient déjà précédemment et qu'aucun d'eux n'avait combattues, le font paraître désirable d'accorder le caractère d'un devoir fixe conventionnel à l'usance signalée ci-dessus de produire des certificats sur le texte des lois, usance que les Etats contractants suivent presque tous mais qu'aucune prescription conventionnelle n'a réglée jusqu'ici.

En conéquence la Commission soumet à la Conférence les résolutions suivantes :

Article 1.

En matière civile et commerciale, le Gouvernement d'un Etat pourra demander au Gouvernement d'un autre Etat la délivrance d'un certificat officiel sur le texte et la validité des lois de ce dernier Etat.

Article 2.

Le Gouvernement auquel cette demande a été adressée, sera obligé d'y satisfaire, sans qu'il y ait lieu de distinguer s'il s'agit de dispositions de loi encore en vigueur, ou de dispositions qui auraient été en vigueur à une époque antérieure.

Cette obligation existe non seulement au cas où les textes de loi sur lesquels le certificat doit porter sont expressément désignés, mais également du moment que la demande a pour objet d'obtenir des renseignements sur les dispositions de loi qui, dans l'Etat requis, règlent certaines matières ou certaines institutions.

Article 3.

L'obligation de délivrer de pareils certificats est limitée à l'indication et à la reproduction des textes, le cas échéant à l'affirmation du fait qu'il n'existe pas dans le pays de dispositions de loi directement applicables à un sujet juridique déterminé.

Article 4.

Aucun Gouvernement n'est tenu de donner des commentaires sur la loi ou de s'expliquer sur son application à un cas déterminé.

Cependant le Guvernement d'un Etat sera informé, à sa demande, si et en quel sens dans l'Etat auquel la demande a été adressée, il s'est formée au sujet d'une certaine loi une jurisprudence interprétative constante.

Article 5.

Les demandes et les réponses seront transmises par la voie diplomatique à moins que la communication directe ne soit admise.

Les certificuats seront délivrés dans la langue des autorités requises. La traduction dans une langue étrangère ne sera fournie qu'à la demande qui en aura été faite expressément et à la charge du remboursement des frais de traduction.

Il ne sera pas nécessaire d'authentifier les certificats par une légalisation spéciale, pourvu que le document soit revêtu de la singnature et du sceau de l'autorité qui les délivre.

Article 6.

Les Etats qui ont consenti aux Conventions de Droit International Privé proposées par la Conférence de La Haye s'obligent réciproquement à se communiquer le texte officiel des lois qu'ils établiront à l'avenir concernant les mêmes matières.

Le Préident et Rapporteur:
Schumacher.

Annexe au Procès-verbal n° 8.

Rapport de la Première Commission*) sur les dispositions concernant les conflits de lois et de juridictions en matière de divorce et de séparation de corps.

La question du divorce et de la séparation de corps dans les rapports internationaux n'a été abordée que dans la Conférence de 1894, Le projet alors arrêté a été maintenu dans ses grandes lignes, modifié sur quelques points et complété sur d'autres.

Article 1.

„Les époux ne peuvent former une demande en divorce que si leur loi nationale et la loi du lieu où la demande est formée admettent le divorce l'une et l'autre.

„Il en est de même de la séparation de corps."

Cest article correspond à la fois à l'article 1 et à l'article 3 du projet de 1894. Celui-ci avait admis la distinction suivante: le divorce ne pouvait être obtenu que s'il était admis à la fois par la loi nationale des

*) Cette Commission était composée de MM. Renault, Délégué de France, Président et Rapporteur; Kriege, Délégué d'Allemagne; van den Bulcke, Délégué de Belgique; Oliver y Esteller, Délégué d'Espagne; Lainé, Délégué de France; Töry, Délégué de Hongrie; Heemskerk, Délégué des Pays-Bas; Goussakowsky, Délégué de Russie; de Hammarskjöld, Délégué de Suède; Meili, Délégué de Suisse. Le comte de Selir, Délégué de Portugal, a régulièrement pris part aux travaux de la Commission.

époux et par la loi du lieu où la demande était formée. Pour la séparation de corps, la règle n'était pas identique. Sans doute, la séparation pouvait d'abord être demandée, si la loi nationale des époux et la loi du lieu où la demande est formée l'admettaient également; elle pouvait l'être aussi dans un autre cas, celui où la loi nationale des époux admet seulement le divorce, tandis que la lex fori n'admet que la séparation de corps. La Conférence de 1894 avait cru, par cette disposition un peu arbitraire, il faut le reconnaître, trouver une solution acceptable à une situation pénible. Des époux dont la loi nationale ne connaît que le divorce, sont établis dans un pays qui ne connaît que la séparation de corps. La vie commune est devenue intolérable. Comment y mettre fin? la séparation de corps avait paru un moyen possible. Cette solution n'a pas résisté à un nouvel examen et on a facilement admis à une grande majorité, sur la proposition du Gouvernement néerlandais, qu'elle devait être écartée. Elle est d'abord contraire à l'idée fondamentale que la loi nationale est naturellement compétente en cette matière: elle a pour résultat d'établir entre les époux une solution que ne connaît pas leur loi nationale et qui ne sera pas reconnue par elle, car c'est une erreur, résultant d'une vue superficielle, de croire que le législateur qui admet le divorce doit admettre la séparation de corps, parce que le plus comprend le moins. Dans un pays où existent à la fois le divorce et la séparation de corps, cela est vrai en général. Il en est différemment pour un pays où n'existe que le divorce; la séparation de corps n'y est pas considérée comme étant moins que le divorce, mais comme étant autre chose. Dans ce pays, le législateur, à tort ou à raison, a pensé qu'il n'y avait qu'un moyen de faire cesser la vie commune. Il écarte tout autre moyen, soit sur son territoire pour tout le monde, soit à l'étranger pour ses nationaux, en ce sens qu'il ne tiendra pas compte d'une séparation de corps prononcée entre ceux-ci conformément à la lex fori. Dès lors, pourquoi permettre aux tribunaux du domicile de la prononcer? En pareil cas, les époux qui veulent cesser la vie commune, n'ont qu'à s'adresser à leur juridiction nationale. Il ne faut pas se dissimuler qu'en fait, ce ne leur sera pas toujours aussi aisé pour divers motifs: les procès relatifs à des incidents qui se sont passés peut-être fort loin du lieu où siège le tribunal, sont longs et coûteux, outre que les conditions d'une bonne administration de la justice sont difficilement remplies. De plus, les parties trouveront-elles toujours une juridiction compétente dans leur partie qu'elles auront quittée depuis longtemps? On pourrait imiter la prévoyance du législateur allemand qui a déterminé avec précision la juridiction nationale compétente pour les Allemands qui sont à l'étranger (parag. 606, al. 2. du Code de procédure).

Quoi qu'il en soit de ces considérations, les pays qui n'ont que le divorce sont naturellement les meilleurs juges de ce qui convient à leurs nationaux à l'étranger. Du moment où ils expriment la volonté que ceux-ci ne puissent pas se soumettre à la séparation de corps, il n'y a pas de raison pour que les pays qui ont à la fois le divorce et la séparation de corps n'admettent pas ce point de vue qui est plus logique, plus conforme

au principe général de la matière. De cette façon, le projet s'est trouvé sinplifié. L'article premier posant la même règle pour le divorce et la séparation de corps, l'article 3 du projet de 1894 disparaît et, par conséquent, aussi l'article 4 du même projet qui statuait relativement aux causes pour lesquelles la séparation de corps peut être demandée, l'article 2 de notre projet traitant à la fois des causes de divorce et de séparation.

Dans cet ordre d'idées M. le Délégué d'Allemagne a tenu à déclarer que la législation allemande ne reconnaissait que le divorce et que, par suite les Allemands ne pouvaient obtenir la séparation de corps à l'étranger. Il y a bien une cessation provisoire de la vie commune (parag. 1575 et 1576 du nouveau Code civil et art. 17. al. 4, de la loi d'introduction) qui se distingue de la séparation de corps en ce qu'elle ne peut être prononcée ni maintenu qu'avec le consentement des deux époux, et qu'elle n'a aucune durée déterminée, tandis que la séparation de corps peut être obtenue par un des époux contre la volonté de l'autre et qu'elle dure, soit pendant un temps déterminé, soit même indéfiniment. Cette cessation de la vie commune ne peut être ordonnée que dans les cas où un divorce serait possible et, par conséquent n'est pas accordée aux étrangers dont la loi nationale n'admet pas le divorce. Quant aux étrangers dont la loi admet le divorce il semble que le bénéfice de cette institution ne doit pas leur être refusé.

Article 2.

„Le divorce ne peut être démandé que, si, dans le cas dont il s'agit, le divorce est admis à la fois par la loi nationale des époux et par la loi du lieu où la demande est formée.

„Il en est de même de la séparation de corps."

On a fait remarquer qu'à la rigueur le projet aurait pu débuter par cet article qui suppose bien la concordance de la loi nationale et de la lex fori pour l'existence du divorce ou de la séparation de corps. Cependant, ce point de vue un peut strict n'a pas prévalu. Il a paru plus clair d'avoir deux articles réglant successivement l'admission du divorce (ou de la séparation) en lui-même, puis l'admission des causes du divorce (ou de la séparation).

La seconde phrase de l'ancien article 2, qui avait été introduite dans la discussion en Conférence plénière*), a été avec raison supprimée comme absolument inutile. De plus, le nouveau texte ne parle pas d'action intentée, mais de demande formée, afin de comprendre les diverses juridictions, même celles qui sont saisies par voie de requête, non par voie d'assignation.

Voilà pour la forme. Quant au fond, la règle de l'ancien article 2 n'avait été admise en 1894 qu'à une assez faible majorité et après une vive discussion, M. Meili a repris, dans la Commission, la thèse qu'il avait déjà soutenue: suivant lui, le divorce étant admis par la législation nationale et la législation du domicile des époux, il suffit, pour les causes

*) Actes de 1894, page 77.

du divorce, de s'en référer à la lex fori. C'est une media sententia entre l'opinion d'après laquelle la loi sur le divorce, ayant un caractère d'ordre public, s'imposerait à tous sans distinction sur le territoire où elle existe, et l'opinion qui exige strictement la concordance des deux lois. Il est inutile d'exposer les arguments de ces diverses opinions; ils ont été complètement présentés dans le rapport de 1894. Cette opinion intermédiaire, bien que se recommandant de l'Institut de Droit international, a été encore moins bien accueillie par la Commission de 1900 que par la Commission de 1894. A la presque unanimité, la Commission a décidé qu'il ne suffirait pas qu'une cause de divorce existât d'après la lex fori.

Cependant le texte n'a pas été maintenu tel quel et, sur l'initiative de MM. les Délégués des Etats scandinaves, un tempérament a été apporté à la règle absolue de 1894; M. Meili reçoit une satisfaction partielle. D'après le Projet de Programme, une cause de divorce ne peut être invoquée que si elle existe à la fois dans les deux législations considérées comme compétentes dans la matière. Une cause de divorce, regardée comme grave dans le pays où s'engage l'instance, ne peut être invoquée si elle n'existe pas dans le pays d'origine des époux. Un simple changement de domicile ne doit pas avoir pour effet de rendre dissoluble par le divorce un mariage qui était indissoluble; il ne doit pas non plus permettre d'invoquer une cause qui n'existait pas. Mais voici ce qui peut arriver: une femme a deux causes de divorce, l'une est admise par la loi nationale et non par la lex fori, l'autre est admise par la lex fori et non par la loi nationale. La règle posée en 1894 a cette conséquence que le divorce ne pourrait pas être demandé dans l'espèce, puisqu'il n'y a pas une cause admise à la fois par les deux lois. La Commission a pensé qu'il y aurait là une extrême rigueur. En effet, dans le cas prévu, le divorce est admis à la fois par les deux législations, bien que ce ne soit pas pour la même cause. Cela suffit pour donner satisfaction au principe dirigeant que nous avons posé.

Pour simplifier, il n'a été parlé dans les explications précédentes que du divorce. Les mêmes idées s'appliquent à la séparation de corps.

Article 3.

„Nonobstant les dispositions des articles 1er et 2, la loi nationale sera seule observée si la loi du lieu où la demande est formée le prescrit ou le permet."

La règle ainsi posée est nouvelle; l'idée en est due au Délégué d'Allemagne. La situation envisagée ne sera certainement pas fréquente, mais si elle se présente, la disposition que la Commission soumet à la Conférence doit être acceptée sans hésitation. On suppose que, dans un pays, la loi prescrit ou permet d'appliquer aux étrangers leur législation nationale en matière de divorce: ce serait juste l'inverse du système d'après lequel la loi locale s'applique aux étrangers sans tenir compte de leur loi nationale. C'est improbable, dira-t-on; il suffit que cela soit possible, pour que cela doive être réglé, parce que l'application pure et simple des

article 1 et 2 amènerait un résultat absurde. Supposons des époux allemands ou français qui sont établis dans un pays où le divorce n'est pas admis; néanmoins la loi de ce pays leur permet de demander le divorce conformément à leur loi nationale et une sentence de divorce intervient. Au point de vue rationnel, comment cette sentence pourrait-elle être critiquée en Allemagne ou en France? Elle est conforme à la loi des deux pays; ils ne peuvent se plaindre que leurs nationaux aient été jugés d'après leurs propres lois. Cependant, si on s'en tient aux règles posées dans les articles 1 et 2, le jugement de divorce ne devrait pas être tenu pour régulier, puisque la condition du respect des deux lois n'a pas été observée et que la règle sur le conflit des lois, posée par la Convention, doit l'emporter sur les dispositions de cette nature qui se trouvent dans les législations particulières.

Dès à présent, on peut dire que le cas prévu par la nouvelle disposition est de nature à se présenter en Italie. Le rapport de la Commission de 1894 signalait un arrêt de la Cour d'Ancône, du 22 mars 1884, qui avait prononcé le divorce entre un Allemand établi à Ancône et sa femme italienne d'origine. Bien que cet arrêt ait été critiqué par la plupart des jurisconsultes italiens, il n'est pas resté isolé. D'autres décisions ont suivi et notre collègue, M. Pierantoni, nous a dit que la jurisprudence était fixée en ce sens. Il faut donc que les pays dont la législation admet le divorce et dont les nationaux divorceraient en Italie, puissent reconnaître cette jurisprudence.

Article 4.

„La loi nationale indiquée par les articles précédents ne peut être invoquée pour donner à un fait qui s'est passé alors que les époux ou l'un d'eux étaient d'une autre nationalité, le caractère d'une cause de divorce ou de séparation de corps."

Le point de départ de cette disposition nouvelle est un amendement du Gouvernement Allemand conforme à l'article 17, alinéa 2, de la loi d'introduction du nouveau Code Civil. Voici l'hypothèse: deux époux sont français, puis deviennent allemands. Pendant qu'ils étaient français, il s'est produit un fait qui ne pouvait donner lieu au divorce d'après la loi française, mais ce fait est une cause de divorce d'après la loi allemande. La nouvelle loi nationale ne peut rétroactivement donner au fait un caractère qu'il n'avait pas au moment où il est intervenu. Cette règle écarte certaines fraudes auxquelles pourrait donner lieu un changement de nationalité. Elle est conforme à l'article 115 de la loi hongroise XXXI 1894.

Un amendement du Danemark avait pour but d'empêcher ces fraudes dont la femme peut être spécialement victime. Comme d'après les lois de certains pays, la naturalisation du mari produit de plein droit effet relativement à la femme, il y a une nouvelle législation commune par suite de laquelle la situation des époux se trouve gravement modifiée. Les époux

étaient mariés sous l'empire d'une loi n'admettant pas le divorce et ils se trouvent soumis à une loi qui l'admet, ou bien c'est l'inverse. Il est grave qu'un tel changement puisse se produire par la seule volonté du mari qui a de cette manière le pouvoir de nuire gravement à la femme. Pour tenir compte de ces considérations, un amendement avait été ainsi formulé: „Un changement de nationalité ayant eu lieu sans le consentement de la femme ne peut être invoqué contre elle.“ Il pouvait y avoir deux applications en sens inverse: le changement de nationalité ne pouvait donner au mari le droit de demander le divorce, s'il ne l'avait pas auparavant: il ne pouvait priver la femme du droit qu'elle aurait eu de le demander. On ne peut contester que cet amendement, accueilli avec faveur par la majorité de la Commission, réponde à une pensée d'équité. Mais, à la réflexion, des difficultés ont surgi. Souvent il sera très difficile de savoir si le changement de nationalité a eu lieu avec ou sans le consentement de la femme, surtout si la question du divorce ne se présente qu'assez longtemps après. En outre, le consentement de la femme a pu être obtenu alors qu'elle ignorait qu'il se fût produit un fait de nature à donner lieu au divorce. Certains peuvent regretter que la femme se trouve, dans quelques pays, naturalisée de plein droit par la naturalisation de son mari, mais il ne peut être question ici de rien proposer dans cet ordre d'idées. En définitive, la Commission s'en est tenue au nouvel article 4: il satisfait dans quelques cas les légitimes préoccupations qui avaient inspiré l'amendement danois, spécialement en ce que le changement de nationalité ne pourra donner au mari le droit de demander le divorce, s'il ne l'avait pas auparavant.

Article 5.

„La demande en divorce ou en séparation de corps peut être formée:

„1° devant la juridiction compétente d'après la loi nationale des époux;

„2° devant la juridiction compétente du lieu où les époux sont domiciliés. Si, d'après leur législation nationale, les époux n'ont pas le même domicile, la juridiction compétente est celle du domicile du défendeur. Dans le cas d'abandon et dans le cas d'un changement de domicile, opéré après que la cause de divorce ou de séparation est intervenue, la demande peut aussi être formée devant la juridiction compétente du dernier domicile commun. — Toutefois, la juridiction nationale est réservée dans la mesure où cette juridiction est seule compétente pour la demande en divorce ou en séparation de corps. La juridiction étrangère reste compétente pour un mariage qui ne peut donner lieu à une demande en divorce ou en séparation de corps devant la juridiction nationale compétente.“

Cet article correspond à l'article 5 du Projet de Programme qui a subi un profond remaniement. Le projet de 1894 mentionnait d'abord la juridiction du domicile, puis la juridiction nationale, tandis que le projet que nous vous soumettons indique ces deux juridictions dans l'ordre inverse. Ce changement de méthode correspond à un changement de système; la majorité

de la Commission a pensé qu'un tel changement était indispensable pour assurer l'entente et obtenir l'adhésion de certains Etats, mais sans se dissimuler la gravité de l'innovation qu'il importe de signaler à la Conférence.

La Conférence de 1894 était partie de l'idée que la juridiction du domicile des époux était, en quelque sorte, la juridiction de droit commun en matière de divorce ou de séparation de corps; c'est celle qu'il est le plus facile de saisir et qui peut aussi le plus aisément constater l'existence des faits allégués. On n'entendait pas, d'ailleurs, exclure la juridiction nationale et on semblait laisser aux époux le choix entre cette juridiction et la juridiction de leur domicile. Il y avait, de plus, relativement aux mariages religieux, une réserve pour la juridiction spéciale qui pouvait être exclusivement compétente; la portée de cette réserve n'avait peut-être pas été indiquée avec une netteté suffisante.

La réserve de la juridiction nationale peut, en effet, se comprendre de deux manières bien différentes. Elle peut signifier simplement que la juridiction nationale ne reconnaîtra pas les divorces ou les séparations de corps qui auraient été prononcés par une autre juridiction. Par exemple, dans le projet relatif aux conflits de lois en matière de mariage, l'article 5, après avoir dit que „sera reconnu partout comme valable, quant à la forme, le mariage célébré suivant la loi du pays où il a eu lieu", ajoute: „Il est toutefois entendu que les pays dont la législation exige une célébration religieuse, pourront ne pas reconnaître comme valables les mariages contractés par leurs nationaux à l'étranger sans que cette prescription ait été observée." La portée de la réserve est ici bien marquée: le pays du domicile peut célébrer le mariage suivant ses formes habituelles, seulement le pays d'origine a le droit de ne pas reconnaître le mariage. Est-ce simplement dans ce sens que la juridiction nationale serait réservée? alors la juridiction du domicile ne serait pas empêchée de statuer, mais ses décisions ne seraient pas acceptées dans le pays d'origine. Les Délégués de Belgique, de France et de Suisse demandaient qu'on adoptât cette solution. Les autres membres de la Commission en ont admis une plus radicale qui consiste à permettre à la loi nationale d'exclure la juridiction du domicile en cette matière; les ressortissants d'un pays qui aurait une pareille loi seraient donc empêchés de plaider devant les tribunaux de leur domicile; il y aurait une fin de non recevoir à opposer à leur action même et pas seulement une restriction dans les effets de la sentence. Les motifs qui ont déterminé la majorité de la Commission sont sans doute que certains Etats tiennent essentiellement à se réserver la juridiction sur leurs nationaux en ces matières et que, sans cette concession, on n'obtiendrait pas leur adhésion au projet. En outre, il est à désirer que des divorces régulièrement prononcés soient reconnus partout, ce qui ne serait pas possible si la juridiction du domicile restait compétente. Ces motifs ont leur valeur, mais le résultat pourra être assez fâcheux dans certains cas où les intéressés seront, en fait, empêchés de recourir à leur juridiction nationale. Il faut supposer que les Etats qui défendent à leurs nationaux à l'étranger de recourir à la juridiction de leur domicile, ont le soin d'instituer pour eux une juridiction compétente.

Quoi qu'il en soit, le point de vue admis par la majorité de la Commission explique le changement survenu dans l'ordre où sont mentionnées la juridiction nationale et la juridiction du domicile: la première est indiquée d'abord, parce qu'elle est toujours compétente, qu'elle ait ou non un caractère exclusif; la juridiction du domicile n'est plus compétente que sous les réserves établies par la loi nationale.

L'article 5, 1°, n'a pas besoin d'autre commentaire. Le mot „juridiction" a été employé dans un sens très large et comprend non seulement les tribunaux proprement dits, civils ou ecclésiastiques, mais les autorités administratives qui peuvent être chargées de prononcer en cette matière.

L'article 5, 2°, s'occupe de la juridiction du domicile à deux points de vue, soit pour régler sa compétence, soit pour indiquer les cas dans lesquels elle est exclue.

Les étrangers pourront s'adresser à la juridiction compétente du lieu de leur domicile. C'est naturellement la loi de ce lieu qui détermine quelle juridiction est compétente, les formes suivant lesquelles elle est saisie et elle statue. Le mot juridiction a ici le même sens large que dans le 1°. Le plus souvent les époux auront le même domicile; si, par application de leur législation nationale, il n'en était pas ainsi, on appliquerait la règle bien connue d'après laquelle la juridiction du domicile du défendeur est compétente: „actor sequitur forum rei". La Commission a, de plus, prévu deux cas particuliers. Un des époux, le mari par exemple, abandonne son conjoint; comment celui-ci qui veut se prévaloir de cet abandon, pourrait-il être obligé de s'adresser au tribunal du domicile du défendeur, alors que presque toujours il ne connaîtra pas ce domicile? De même, une cause de divorce s'étant produite, il intervient un changement de domicile qui pourra être motivé par le désir de gêner l'autre époux dans l'exercice de son action. Dans ces deux cas, la demande peut être formée devant la juridiction compétente du dernier domicile commun. Il va sans dire que ce n'est qu'une facilité qui est ainsi donnée et que rien n'empêche d'intenter l'action devant la juridiction du domicile actuel du défendeur.

La seconde partie du 2° de l'article 5 exprime l'idée qui a été exposée plus haut et d'après laquelle la juridiction nationale est réservée dans la mesure où cette juridiction est seule compétente pour la demande en divorce ou en séparation de corps. La portée de la réserve variera suivant les lois. Ainsi, par exemple, la législation hongroise admet d'une manière exclusive la juridiction hongroise pour les actions concernant le mariage, la séparation de corps et le divorce des Hongrois. La législation espagnole réserve la juridiction religieuse espagnole pour les mariages canoniques espagnols; la législation russe écarte toute juridiction étrangère pour les mariages des orthodoxes russes. La législation suédoise n'admet pas que les causes de divorce ou de séparation de corps réservées au Roi puissent être soumises à des tribunaux étrangers; il en est de même en Norvège et en Danemark. Enfin, les législations allemande et belge réservent aux tribunaux les procès en divorce et excluent, en conséquence, la juridiction

administrative en cette matière pour leurs ressortissants même quand ils sont à l'étranger.

Le principe admis par la Commission au sujet de la possibilité de l'exclusion de la juridiction du domicile par la loi nationale l'a obligée à prévoir un cas spécial. Un mariage a été célébré devant les autorités locales contrairement à la loi nationale des époux qui exige une cérémonie religieuse; d'après l'article 5, alinéa 2, du projet relatif au mariage, le pays d'origine seul peut ne pas reconnaître ce mariage comme valable. Si on appliquait aux époux en pareil cas leur loi nationale qui exclut toute juridiction étrangère en matière de divorce, il en résulterait que ce mariage serait particulièrement solide: on ne pourrait en demander la dissolution dans le pays d'origine pour lequel il est inexistant; on ne pourrait non plus la demander dans les autres pays à raison de la réserve générale au profit de la juridiction nationale. Ce serait un résultat bien déraisonnable qu'a eu pour but d'écarter la dernière phrase de l'article 5.

Article 6.

„Dans le cas où des époux ne sont pas autorisés à former une demande en divorce ou en séparation de corps dans le pays où ils sont domiciliés, ils peuvent néanmoins l'un et l'autre s'adresser à la juridiction compétente de ce pays pour solliciter les mesures provisoires que prévoit sa législation en vue de la cessation de la vie en commun. Ces mesures seront maintenues si, dans le délai d'un an, elles sont confirmées par la juridiction nationale; elles ne dureront pas plus longtemps que ne le permet la loi du domicile.“

La disposition est nouvelle; elle est due à un amendement du délégué d'Espagne spécialement appuyé par le Délégué de Suède et le Délégué de Hongrie qui a cité en ce sens l'article 118 de la loi hongroise XXXI 1894. Elle est devenue surtout nécessaire depuis la décision prise par la Commission à propos de l'exclusion de la juridiction du domicile par la loi nationale. En vertu de l'article 5 2°, il arrivera fréquemment que des époux étrangers ne trouveront pas, là où ils sont établis, de juridiction compétente pour prononcer entre eux le divorce ou la séparation de corps, parce que leur loi nationale exclut les juridictions étrangères d'une manière générale ou dans le cas particulier. Ils devront donc s'adresser à leur juridiction nationale, mais il faudra pour cela un temps plus ou moins long et des mesures provisoires peuvent être indispensables pour faire cesser la vie commune devenue intolérable. Ces mesures pourront être sollicitées des tribunaux locaux par l'un ou l'autre des époux. C'est la législation du lieu qui détermine si une juridiction est compétente et quelles mesures peuvent être ordonnées (autorisation donnée à la femme d'avoir une résidence séparée, pension alimentaire, sort des enfants etc.). Ces mesures ne peuvent subsister indéfiniment et elles sont soumises à une double législation. C'est à la juridiction nationale saisie de la demande en divorce ou en séparation qu'il appartient de statuer au sujet de ces mesures comme au sujet du

fond; elle pourra les maintenir ou leur en substituer d'autres; si aucune décision n'intervenait dans le délai d'un an, les mesures tomberaient. L'autre limitation est tirée de la loi du domicile qui peut fixer un délai au-delà duquel les mesures de ce genre ne peuvent se prolonger.

Article 7.

„Le divorce et la séparation de corps, prononcés par un tribunal compétent aux termes de l'article 5, seront reconnus partout sous la condition que les clauses de la présente Convention auront été observées et que, dans le cas où la décision aurait été rendue par défaut, le défendeur ait été cité conformément aux dispositions spéciales exigées par sa loi nationale pour reconnaître les jugements étrangers.

„Seront reconnus également partout le divorce et la séparation de corps prononcés par une juridiction administrative, si la loi de chacun des époux reconnaît ce divorce et cette séparation."

S'il est désirable qu'un mariage célébré régulièrement dans un pays soit partout reconnu valable, on peut dire la même chose d'un divorce. Si un mariage déclaré dissous dans un pays est considéré comme non dissous dans un autre, cela peut être l'occasion de graves conflits d'intérêts et même de scandales. Il est donc tout naturel que la Commission, après avoir posé des règles de compétence dans l'article 5, se soit préoccupée d'assurer la reconnaissance des divorces et des séparations de corps prononcés. Elle a rencontré plusieurs difficultés, aussi n'est-elle pas arrivée à une règle simple, des concessions ayant dû être faites à des idées différentes.

L'article que propose la Commission distingue nettement deux cas:

1°. Le divorce et la séparation de corps ont été prononcés par un „tribunal" compétent, le mot „tribunal" étant employé par opposition avec juridiction administrative. Alors ils sont reconnus partout, si certaines conditions ont été remplies. La première est que le tribunal ait été compétent dans les termes de l'article 5; la seconde est que les clauses de la convention aient été observées, par exemple en ce qui touche les articles 1 à 4. La troisième est spéciale au cas où la décision aurait été rendue par défaut; il est à craindre que le condamné n'ait pas été à même de se défendre parce que le mode de citation employé ne garantit pas suffisamment qu'il a été averti de la demande. La Commission a cherché longtemps et vainement une formule qui pût convenir aux divers pays. Elle s'est alors bornée à renvoyer aux diverses législations; il faudra que le défendeur ait été cité conformément aux dispositions spéciales exigées par sa loi nationale pour reconnaître les jugements étrangers. Ici s'appliquera, par exemple, en ce qui concerne un Allemand condamné par défaut, le § 328, n° 2, du Code de procédure.

L'adoption de la règle proposée par la Commission aurait pour résultat de faire disparaître des difficultés inextricables soulevées par certaines dispositions législatives, comme celle de l'art. 56 de la loi fédérale suisse de 1874:

„quant aux mariages entre étrangers, aucune action en divorce ou en nullité ne peut être admise pas les tribunaux, s'il n'est pas établi que l'Etat, dont les époux sont ressortissants, reconnaîtra le jugement qui sera prononcé". Il est à supposer que les autorités suisses qui ont vainement tenté de donner un sens acceptable pour la pratique à un pareil texte, étrangement restrictif, trouveront que la justification exigée par la loi existe dans les rapports de la Suisse avec les pays qui, comme elle, signeront la Convention projetée. Ce sera un résultat certainement avantageux, qui se produira aussi en ce qui touche l'article 116 de la loi hongroise XXXI 1894, ainsi conçu: „les tribunaux hongrois ne statueront dans un procès matrimonial entre étrangers qu'à la condition que le jugement soit exécutoire dans l'Etat dont les époux sont les nationaux."

Le Délégué d'Espagne a proposé d'ajouter au 1er alinéa de l'art. 7 la restriction suivante: „toutefois les Etats où la loi n'autorise pas le divorce pourront ne pas reconnaître comme valable le divorce prononcé par les tribunaux étrangers entre des époux qui ont contracté leur mariage d'après la loi desdits Etats." Cet amendement n'a pas été accepté par la Commission. Il semble cependant que la divergence entre les idées de celle-ci et celles de M. Oliver y Esteller ne soit pas absolue. Ce qui préoccupe M. le Délégué d'Espagne, ce n'est pas de refuser en Espagne tout effet à un divorce prononcé à l'étranger, c'est surtout d'empêcher que ce divorce puisse servir à contracter un nouveau mariage en Espagne devant les autorités espagnoles. Il faut remarquer d'abord que la question ne se présente pas pour des Espagnols, puisque le divorce n'aurait pu être prononcé entre eux qu'en violation de l'art. 1 de la présente convention et qu'ainsi, aux termes de notre article lui-même, il ne devrait pas être reconnu. Pour les autres cas où le divorce aurait été régulièrement prononcé, par exemple, entre Français, l'Espagne admettrait-elle sans distinction qu'un nouveau mariage ne peut avoir lieu, qu'il s'agisse de catholiques ou de protestants, de mariages célébrés en Espagne ou ailleurs? nous ne savons. Mais nous pensons que le Gouvernement Espagnol obtiendra une garantie suffisante pour les idées qui lui sont chères en adhérant au projet que nous soumettons à la Conférence pour régler les conflits de lois en matière de mariage. L'art. 2, alinéa dernier, de ce projet lui permettra de ne pas faire célébrer un mariage qui, „à raison d'un mariage antérieur", serait contraire à ses lois. En outre, les Etats qui ne veulent pas que leurs nationaux épousent une personne divorcée, peuvent établir à cet effet un empêchement relatif, en ce sens qu'une Espagnole, par exemple, ne pourrait épouser un divorcé du vivant du conjoint de celui-ci. Dès lors, pourquoi ne pas reconnaître à d'autres points de vue les effets d'un divorce régulièrement prononcé à l'étranger sans que les lois de l'Espagne aient été violées? Nous espérons que l'honorable Délégué d'Espagne ne maintiendra pas son amendement devant la Conférence. Ces mêmes considérations peuvent avoir de la valeur pour le Portugal dont la législation est analogue à celle de l'Espagne.

2°. Le divorce et la séparation ont été prononcés par une juridiction administrative. Des membres de la Commission ne sont pas partisans de

la distinction ainsi faite par l'article 7 et sont disposés à accepter les décisions de toute juridiction compétente dans les pays contractants, mais ils ont dû céder à la résistance absolue de certains de leurs collègues. L'obligation de reconnaître le divorce et la séparation en pareil cas n'existe donc que si la loi de chacun des époux reconnaît ce divorce et cette séparation. Par exemple, on reconnaîtra partout le divorce prononcé par le Roi de Suède entre deux Suédois ou entre un Suédois et une Danoise, ce qui ne veut pas dire qu'on soit obligé de tenir pour non avenu le divorce prononcé par le Roi de Suède entre deux étrangers établis sur son territoire, si la législation de ces étrangers n'excluait pas la juridiction du domicile.

Article 8.

„Si les époux n'ont pas la même nationalité, leur dernière législation commune devra, pour l'application des articles précédents, être considérée comme leur loi nationale."

Cet article n'est que la reproduction de l'article 6 du Projet de Programme, ce qui ne veut pas dire qu'il ait été maintenu sans difficulté. Tant s'en faut! La place à assigner à cet article a donné lieu à une discussion prolongée dans laquelle des hypothèses un peu compliquées ont été très ingénieusement construites et opposées les unes aux autres. Nous ne ferons pas pénétrer la Conférence dans les détails de la lutte, nous nous bornerons à en indiquer l'objet et le résultat.

M. le Délégué de Hongrie demandait d'abord simplement que la règle de l'article 8 fût placée avant la disposition sur la compétence de manière à ne s'appliquer qu'aux articles 1 à 4. La situation serait alors la suivante. La question de la différence de nationalité n'étant pas prévue pour la compétence, il pourrait arriver que l'on eût deux juridictions nationales également compétentes. Par exemple, deux époux sont autrichiens, la femme devient hongroise sans le consentement de son mari (ce qui est possible), le mari reste autrichien; la juridiction hongroise et la juridiction autrichienne, étant également dans l'espèce des juridictions nationales, seront compétentes l'une et l'autre, pourront rendre des décisions contradictoires qui devront être reconnues partout. Le Délégué d'Allemagne a particulièrement insisté sur l'impossibilité d'admettre une pareille solution qui équivaudrait à l'organination des conflits de juridictions. Dans le cas où les époux n'ont pas la même nationalité au moment où il s'agit de former une demande en divorce, on admet, dans une pensée de justice et pour éviter les fraudes, qu'il faut s'attacher à la dernière législation commune des époux. Pourquoi cette règle, bonne pour le fond du droit, ne serait-elle pas aussi bonne pour la compétence? On ne le voit pas. Telle est l'idée essentielle qui a été trouvée juste par la grande majorité de la Commission et qu'elle demande à la Conférence d'approuver en laissant à la règle la place qui lui est assignée après les dispositions sur la compétence.

M. Töry a soumis à la Commission deux propositions différentes entre lesquelles il lui laissait le choix. La première consistait à introduire un

nouvel article d'après lequel „les Etats contractants ne sont obligés d'appliquer les dispositions des articles 5, 6 et 7 que quand il s'agit d'époux ayant la même nationalité au moment où le divorce ou la séparation de corps est demandé". C'était neutraliser l'effet de la place assignée à la règle et, par suite, il aurait été plus simple de mettre alors la règle immédiatement avant les dispositions sur la compétence. La seconde proposition consistait à avoir un nouvel article 10 ainsi rédigé:

„Avant de signer la présente Convention, chaque Etat contractant aura le droit de faire la réserve que, pour ses ressortissants, l'article 8 ne s'appliquera pas aux dispositions des articles 5, 6 et 7.

„Les autres Etats contractants, dans leurs relations avec l'Etat faisant cette réserve, ne seront pas obligés d'appliquer l'article 8 aux dispositions des articles 5, 6 et 7.

„La réserve en vertu du présent article sera faite dans un protocole additionnel qui formera une partie intégrante de la présente Convention."

La pensée de M. Töry est de faciliter l'acceptation du projet par son Gouvernement. Il craint que la règle de l'article 8 appliquée à la compétence ne soit une grave objection, et il veut permettre de l'écarter. Mais la Commission et, après elle, la Conférence se contrediraient en posant d'abord une règle jugée bonne, puis en ajoutant qu'il sera loisible à chaque Etat contractant de la supprimer. Voilà pour le fond. En la forme, la disposition paraîtrait bien insolite. Nous avons le ferme espoir que le Gouvernement Hongrois acceptera la règle que proposent presque tous les Etats représentés et qu'il tiendra compte des importantes concessions faites par le projet aux particularités des lois hongroises. Si, par impossible, le Gouvernement Hongrois maintenait son point de vue, il ferait connaître aux autres Gouvernements qu'il n'est disposé à signer le projet que si satisfaction lui est donnée sur la question soulevée par M. Töry. Les autres Gouvernements verraient s'il leur convient d'adopter une pareille réserve. Quant à présent, le projet doit être dégagé de toute disposition en ce sens.

A la rédaction de l'article 6 du Projet de Programme que nous maintenons purement et simplement, un amendement belge proposait d'ajouter: „à défaut de législation commune, on appliquera la loi nationale du mari." Il visait le cas où les époux n'auraient jamais eu de législation commune, c'est-à-dire la même nationalité. Il y a eu, en effet, il y a peut-être encore des législations d'après lesquelles le mariage ne confère pas de plein droit à la femme la nationalité du mari. Tel n'est pas le cas dans les pays représentés dans la Commission ainsi qu'il a été constaté; il en est vraisemblablement ainsi dans les autres pays représentés à la Conférence et nous faisons appel à l'obligeance de nos collègues pour nous signaler les exceptions qui pourraient exister. L'amendement a donc été retiré comme étant sans objet: il n'aura pas été sans utilité, puisqu'il aura permis de vérifier un point intéressant.

Article 9.

„La présente Convention ne s'applique qu'aux demandes en divorce ou en séparation de corps formées dans l'un des Etats contractants si l'un des plaideurs au moins est le ressortissant d'un de ces Etats.

„Aucun Etat ne s'oblige, par la présente Convention, à appliquer une loi qui ne serait pas celle d'un Etat contractant."

Cette disposition nouvelle correspond à celle que nous avons insérée dans l'article 8 du projet relatif aux conflits de lois en matière de mariage et se justifie de la même manière.

En conséquence, la Commission soumet à la Conférence les résolutions suivantes:

Avant-projet d'une Convention pour régler les conflits de lois et de juridictions en matière de divorce et de séparation de corps.

Article 1. (Voir articles 1 et 3 du Projet de Programme.)

Les époux ne peuvent former une demande en divorce que si leur loi nationale et la loi du lieu où la demande est formée admettent le divorce l'une et l'autre.

Il en est de même de la séparation de corps.

Article 2. (V. article 2 Proj. de Progr.)

Le divorce ne peut être demandé que si, dans le cas dont il s'agit, le divorce est admis à la fois par la loi nationale des époux et par la loi du lieu où la demande est formée.

Il en est de même de la séparation de corps.

Article 3. (Article nouveau.)

Nonobstant les dispositions des articles 1er et 2, la loi nationale sera seule observée si la loi du lieu où la demande est formée le prescrit ou le permet.

Article 4. (Article nouveau.)

La loi nationale indiquée par les articles précédents ne peut être invoquée pour donner à un fait qui s'est passé alors que les époux ou l'un d'eux étaient d'une autre nationalité, le caractère d'une cause de divorce ou de séparation de corps.

Article 5. (V. article 5 Proj. de Progr.)

La demande en divorce ou en séparation de corps peut être formée:

1°. devant la juridiction compétente d'après la loi nationale des époux;

2°. devant la juridiction compétente du lieu où les époux sont domiciliés. Si, d'après leur législation nationale, les époux n'ont pas le même domicile, la juridiction compétente est celle du domicile du défendeur. Dans le cas d'abandon et dans le cas d'un changement de domicile opéré après

que la cause de divorce ou de séparation est intervenue, la demande peut aussi être formée devant la juridiction compétente du dernier domicile commun. — Toutefois, la juridiction nationale est réservée dans la mesure où cette juridiction est seule compétente pour la demande en divorce ou en séparation de corps. La juridiction étrangère reste compétente pour un mariage qui ne peut donner lieu à une demande en divorce ou en séparation de corps devant la juridiction nationale compétente.

Article 6. (Article nouveau.)

Dans le cas où des époux ne sont pas autorisés à former une demande en divorce ou en séparation de corps dans le pays où ils sont domiciliés, ils peuvent néanmoins l'un et l'autre s'adresser à la juridiction compétente de ce pays pour solliciter les mesures provisoires que prévoit sa législation en vue de la cessation de la vie en commun. Ces mesures seront maintenues si, dans le délai d'un an, elles sont confirmées par la juridiction nationale; elles ne dureront pas plus longtemps que ne le permet la loi du domicile.

Article 7. (Article nouveau.)

Le divorce et la séparation de corps, prononcés par un tribunal compétent aux termes de l'article 5, seront reconnus partout sous la condition que les clauses de la présente Convention auront été observées et que, dans le cas où la décision aurait été rendue par défaut, le défendeur ait été cité conformément aux dispositions spéciales exigées par sa loi nationale pour reconnaître les jugements étrangers.

Seront reconnus également partout le divorce et la séparation de corps prononcés par une juridiction administrative, si la loi de chacun des époux reconnaît ce divorce et cette séparation.

Article 8. (V. article 6 Proj. de Progr.)

Si les époux n'ont pas la même nationalité, leur dernière législation commune devra, pour l'application des articles précédents, être considérée comme leur loi nationale.

Article 9. (Article nouveau.)

La présente Convention ne s'applique qu'aux demandes en divorce ou en séparation de corps formées dans l'un des Etats contractants si l'un des plaideurs au moins est le ressortissant d'un de ces Etats.

Aucun Etat ne s'oblige, par la présente Convention, à appliquer une loi qui ne serait pas celle d'un Etat contractant.

Le Président et Rapporteur:
L. Renault.

Procès-verbal n° 9. (Séance du 18 juin 1900.)

La séance est ouverte à $9^1/_2$ heures.

Sont présents:

M.M. Asser, Président, Dungs, Kriege, Schumacher, Töry, van den Bulcke, Matzen, Renault, Lainé, Pierantoni, Thorn, Rahusen, Ort, le compte de Selir, Missir, de Martens, Goussakowsky, de Hammarskjöld, Beichmann, Meili et Roguin.

Le Président dit qu'il sera matériellement impossible de soumettre tous les procès-verbaux dans leur texte définitif à l'approbation de la Conférence. Le Secrétariat, avec un zèle digne de tout éloge, en a, dans un très bref délai, fait parvenir les épreuves à M.M. les Délégués et celles des procès verbaux des dernières séances seront encore distribuées aujourd'hui avant la séance de clôture; mais il n'a pas été possible d'arrêter le texte définitif parce que les épreuves, munies des corrections éventuellement désirées par M.M. les Délégués, n'ont jusqu'ici pas toutes pu être retournées au Secrétariat.

Le Président prie les Délégués de vouloir bien renvoyer ces épreuves aussitôt que possible.

Dans ces conditions le Président estime que la meilleure manière de procéder serait de conférer aux Chefs de mission accrédités à La Haye, Présidents d'honneur de la Conférence, et aux Délégués néerlandais le mandat d'arrêter définitivement les procès-verbaux.

Cette proposition est acceptée.

Le Président prie M. Roguin de vouloir bien faire connaître à la Conférence l'avis de la Commission désignée dans la séance du 16 juin pour examiner une proposition faite par M. Beichmann.

M. Roguin s'exprime en ce termes:

M. le Délégué de Norvège a demandé une adjonction à l'article 11 du Projet de Convention relative aux successions, aux testaments et aux donations à cause de mort. Cet article 11 est ainsi conçu:

„La présente Convention ne s'applique que dans le cas où le défunt, au moment de son décès, appartenait à un des Etats contractants."

La disposition doit s'interpréter dans ce sens que, en principe, la Convention est applicable dans tous les cas où le défunt est le ressortissant d'un des Etats contractants, même dans l'hypothèse où il aurait été domicilié dans un Etat non contractant. Et, la Convention pourrait même être comprise comme applicable, par exemple, à la succession d'un Norvégien, domicilié en Angleterre, et qui délaisserait des biens situés en Norvège et en Angleterre, sans avoir de fortune nulle part ailleurs. Les autorités norvégiennes seraient alors obligées d'appliquer la loi norvégienne aux biens situés en Norvège, ce qui romprait l'unité de la succession.

M. le Délégué de Norvège considérerait ce résultat comme fâcheux pour son Etat. Il désire que la Norvège puisse continuer à observer dans

ses relations avec la Grande Bretagne, les Etats-Unis, etc. la loi du domicile en matière de successions. Afin de permettre le maintien de cette pratique, M. Beichmann propose d'ajouter à l'article 11 un deuxième alinéa ainsi conçu :

„Chaque Etat contractant a la faculté d'exclure l'application de la présente Convention en ce qui concerne les successions de ses nationaux qui, lors de leur décès, auraient leur domicile dans un Etat non contractant."

La Commission a été unanime pour proposer à la Conférence de déférer au désir de M. le Délégué de Norvège, et d'adopter le deuxième alinéa qu'il a proposé.

Tout Etat contractant aurait donc la faculté d'exclure, par mesure générale, l'application de la Convention dans le cas visé par le deuxième alinéa.

Il est à observer, d'autre part, que tout autre Etat contractant, par exemple la France, dans l'hypothèse où une partie de la fortune du défunt norvégien serait située sur son territoire, aura alors la faculté d'appliquer à ces biens soit les dispositions de sa loi interne, soit les règles de droit international privé de cette même législation, soit par analogie celles du présent projet.

Le Président remercie M. Roguin pour le rapport oral qu'il vient de faire.

La Conférence accepte, sans appel nominal, la proposition de M. Beichmann, appuyée par la Commission.

L'ordre du jour comporte l'examen des propositions de la Première Commission, sous la littéra A, concernant

les effets du mariage sur l'état de la femme et des enfants;*)

M. van den Bulcke fait remarquer que les dispositions concernant les effets du mariage sur l'état de la femme et des enfants ne sont que la reproduction textuelle du Projet de Programme. Ces dispositions n'ont été adoptées que sous réserve du renvoi de la matière à l'examen bienveillant et approfondi de la Commision Royale Néerlandaise pour le Droit International Privé, en suggérant à celle-ci l'idée de distraire de l'ensemble du projet tout ce qui concerne les enfants et de formuler à cet égard un projet spécial auquel on ajouterait, conformément au programme de la Première Conférence de 1893, certaines règles concernant la paternité, la filiation, l'adoption et la puissance paternelle. Dans ces conditions il semblerait préférable de ne discuter la littéra A que d'une manière générale, sans lecture des divers articles.

Le Président dit qu'il avait l'intention de traiter ces projets comme ceux sur la tutelle des majeurs et sur les certificats de lois, c'est-à-dire

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*) Voir l'annexe à ce Procès-verbal.

de ne pas voter les articles mais de procéder à un échange de vues qui permettrait de connaître l'opinon de MM. les Délégués par rapport à chaque disposition. Ce serait très utile pour la Commission Néerlandaise, quand, conformément au désir de la Conférence actuelle, elle aura à préparer le terrain pour une Conférence ultérieure qui pourra élaborer un projet de convention sur ces matières.

M. van den Bulcke s'étant rangé à l'avis du Président, la Conférence approuve cette manière de procéder.

On aborde donc l'article 1, qui est conçu en ces termes:

„Les effets du mariage sur l'état et la capacité de la femme, ainsi que sur l'état de leurs enfants qui seraient nés avant le mariage, se règlent d'après la loi du pays auquel appartenait le mari lorsque le mariage a été contracté."

Cet article ne donne pas lieu à des observations.

On passe à l'article 2:

„Les droits et les devoirs du mari envers la femme et de la femme envers le mari sont déterminés par la loi nationale du mari. Toutefois, ils ne peuvent être sanctionnés que par les moyens que permet également la loi du pays où la sanction est requise."

M. Meili pose la question de savoir s'il ne serait pas utile d'intercaler après „devoirs" le mot: „personnels".

M. Lainé, Rapporteur, suppose que M. Meili désire exclure la question des biens. Mais à son avis cette question est exclue déjà en vertu de l'article 4 de la littéra B.

M. Meili se déclare satisfait, son but ayant été de provoquer une explication sur ce point.

On passe à l'article 3:

„En cas de changement de nationalité du mari seul, les rapports des époux restent régis par leur dernière loi nationale commune. Mais l'état des enfants nés depuis le changement de nationalité est régi par la loi nationale nouvelle du père."

M. Meili recommande à la Commission Néerlandaise de tenir compte du droit en vigueur en Suisse. La Suisse se trouverait dans une position délicate vis-à-vis d'une convention sur cette matière, surtout en ce qui touche la législation concernant les effets du mariage sur l'état des enfants.

M. Pierantoni fait des réserves expressés par rapport à l'article 3. La Conférence s'est toujours abstenue de discuter la grave question de la nationalité, en alléguant que la Conférence est une Conférence de droit international privé. Il est vrai qu'il est bien difficile de séparer le droit public du droit privé parce que „jus privatum sub tutela juris publici manet". Mais article 3 au contraire reconnaît en premier lieu le droit de changement de nationalité du mari seul, et déclare en second lieu, pour faire droit à des considérations d'honnêteté et de justice, que les rapports des époux resteront régis par leur dernière loi nationale.

M. Pierantoni signale les fâcheux effets qui résulteront d'un changement de nationalité opéré dans le but d'obtenir le divorce. Il rappelle que, dans les projets sur le mariage et le divorce, on s'est appliqué à faire disparaître les abus; mais on n'y a pas parlé des enfants, des droits acquis etc.

Le Délégué d'Italie espère que lorsque le projet concernant les effets du mariage sur l'état de la femme et des enfants sera mis à l'étude, on tiendra compte des graves questions qu'il vient de soulever.

Le Président fait observer à M. Pierantoni que l'article 3 est précisément destiné à protéger les intérêts des enfants. En tout cas la Commission ne manquera pas d'examiner les points signalés par M. Pierantoni.

On passe à la littéra B:

les effets du mariage sur les biens des époux.

La discussion est ouverte sur l'article 1:

„En l'absence de contrat, les effets du mariage sur les biens des époux, tant meubles qu'immeubles, se règlent d'après la loi du pays auquel appartenait le mari lorsque le mariage a été contracté."

M. Dungs observe qu'au point de vue de la législation allemande une réserve au profit de la loi du domicile devrait être ajoutée à l'article 1er. On ne pourrait faire prévaloir d'une manière absolue l'application, vis-à-vis des tiers de bonne foi, de la loi nationale en ce qui concerne les biens conjugaux.

M. Dungs désirerait attirer l'attention de ses collègues sur la question de savoir si les législations de leurs Etats ne rendent pas désirable, elles aussi, une pareille réserve.

M. Pierantoni approuve l'article 1er qui soumet à la loi du mari les biens tant meubles qu'immeubles des époux.

Mais il recommande à la Commission Néerlandaise qui veut bien se charger de préparer un avant-projet sur cette matière pour une conférence ultérieure, d'examiner la question de l'exécution des jugements, afin de donner plus de force au droit conventionnel que l'on va reconnaître. Le Gouvernement Italien s'est depuis longtemps rendu compte de la nécessité de faire disparaître les incertitudes et les difficultés qui résultent du défaut de règles généralement reconnues. Il est toujours dit dans les protocoles que les Etats contractants reconnaissent les principes et les effets des principes adoptés; mais il n'a jamais été déclaré, soit que les sentences qui seront prononcées en vertu des conventions seront exécutoires sans objection, soit que l'exécution se fera suivant une forme générale de procédure à adopter.

M. Renault croit que la question de l'exécution des jugements a été écartée par la Conférence. D'ailleurs, en ce qui concerne la matière spéciale dont il s'agit ici, dans les cas où la femme a besoin d'une autorisation, l'exéquatur n'est pas de rigueur comme pour les jugements proprement dits.

M. Roguin désire faire quelques observations par rapport à la question des intérêts des tiers. A ce sujet M. Dungs a suggéré une réserve pour l'application de la loi du domicile.

M. Roguin estime qu'une réserve en faveur de la loi du domicile pour les tiers est très compréhensible quand il s'agit de lois impératives et prohibitives, mais il ne la comprend pas quand il s'agit de dispositions que les époux peuvent écarter par le contrat de mariage.

M. Dungs répond qu'en Allemagne les modifications conventionnelles du régime matrimonial légal sur les biens des époux ne peuvent, en vertu de l'article 1435 du Code civil allemand, être opposées aux tiers de bonne foi que si ces modifications ont été publiées au moyen d'inscriptions dans un registre spécial.

M. Roguin constate qu'il résulte de l'explication donnée par M. le Délégué d'Allemagne que les dispositions du droit allemand par rapport au régime matrimonial ne sont pas toujours strictement obligatoires, puisque les époux peuvent se réserver une certaine liberté d'action même vis-à-vis des tiers, pourvu que les stipulations soient enregistrées.

La Conférence se trouve, ici aussi, en présence de deux principes, celui de la loi nationale et celui de la loi du domicile des époux.

L'opposition entre ces deux principes, dérivant d'ordres d'idées tout-à-fait différents, a empêché la Commission d'arriver à un résultat.

M. Roguin a proposé à la Commission un système conciliatoire qui consiste à faire interroger les époux par un fonctionnaire et à leur permettre en même temps de se référer à la loi du domicile par une brève déclaration officielle, prononcée devant ce fonctionnaire. Il recommande cette idée à l'attention bienveillante de la Commission Néerlandaise. D'après le rapport de M. Lainé, on a objecté qu'en adoptant ce système on empiéterait sur le domaine des législations nationales en leur imposant une forme spéciale pour la célébration du mariage. Mais le but de la proposition n'est évidemment nullement d'imposer aux Etats l'obligation d'établir un état civil à cet effet. On a aussi objecté que certaines législations ne permettent pas de se référer une loi quelconque par une clause générale. Cependant une modification de ces législations par voie de convention ne serait pas impossible.

La France de son côté ne pourrait avoir des objections au système proposé par M. Roguin puisque la jurisprudence française admet que les époux se réfèrent par convention tacite ou expresse à une loi étrangère. M. Roguin demande seulement que cette convention soit formulée par écrit.

Quant à l'Allemagne, le paragraphe 1433 du Code allemand prévoit expressément la faculté pour les époux allemands domiciliés à l'étranger au moment du mariage de se référer au régime nuptial du droit étranger. La combinaison proposée par M. Roguin ne ferait qu'élargir cette faculté en permettant d'en faire usage par une déclaration très simple.

M. Roguin croit devoir se borner ici aux quelques brèves observations qu'il vient de formuler par rapport à sa proposition, insérée comme annexe au rapport de la Commission.

Le Président trouve l'idée de M. Roguin très originale et digne d'être sérieusement étudiée par la Commission Néerlandaise. Il est incontestable qu'elle présente de grands avantages.

On passe à l'article 2:

„La capacité de chacun des futurs époux pour conclure un contrat de mariage est déterminée par sa loi nationale."

M. Missir observe que l'article 2 concernant la capacité des époux de conclure le contrat de mariage ne reproduit plus deux dispositions qui se trouvaient dans le projet de la Commission Néerlandaise.

On a supprimé le second alinéa de l'article 3 de ce projet qui statuait que la loi nationale de chacun des époux décide si le consentement des parents est nécessaire pour la validité du contrat. Il est bien entendu que cette règle est la conséquence du principe admis par l'article 2.

Une disposition en ce qui concerne le droit des époux de modifier ou de résilier leurs conventions au cours du mariage a également été supprimée. M. Missir suppose que cela revient à dire qu'on se rapporte à la loi personnelle des époux, qui est celle du mari au moment de contracter le mariage, comme cela avait été proposé par le projet néerlandais.

M. Dungs fait observer que les membres de la Commission n'ont cependant pas tous partagé cette opinion. Quelques-uns étaient d'avis que la faculté de conclure un nouveau contrat de mariage ou de modifier ou résilier le contrat pendant le mariage dépend de la loi nationale du mari au moment de la conclusion du mariage. Pour citer un exemple, la loi française n'admet pas la faculté de modifier ou de résilier le contrat; la loi allemande par contre ne s'y oppose pas. Or, certains membres de la Commission voulaient refuser cette faculté à des époux qui, Français au moment de la conclusion du mariage, sont plus tard devenus Allemands.

D'un autre côté, M. Dungs ne pourrait admettre que des époux allemands soient empêchés de conclure un nouveau contrat pour le seul motif qu'ils ont été antérieurement français.

M. Dungs estime que la faculté en question doit dépendre de la loi nationale actuelle du mari. Toutefois, dans les cas où les époux peuvent conclure un contrat au cours du mariage, les restrictions produites par le mariage à l'égard de la femme sont régies, au cas d'un changement de nationalité, par la loi nationale nouvelle, dès que les époux auront réglé leurs relations par rapport aux biens conformément à cette loi.

M. van den Bulcke confirme les explications données par M. Dungs. Il ajoute toutefois que la Commission a encore discuté à un point de vue plus délicat la question dont il s'agit. Dans beaucoup de pays l'immutabilité des conventions matrimoniales est d'ordre public. Le principe contraire devait donc soulever une opposition considérable. La Commission a jugé préférable d'écarter en principe toute disposition concernant cette matière.

L'article 3 ne donne pas lieu à des observations:

„La validité d'un contrat de mariage et ses effets sont régis par la loi du pays auquel le mari appartenait au moment de la célébration du mariage."

Il en est de même de l'article 4:

„Le contrat de mariage est valable, quant à la forme, s'il a été conclu, soit conformément à la loi du pays où il a été fait, soit conformément à celle du pays auquel appartenait le mari au moment de la célébration du mariage.

„Lorsque la loi nationale de chacun des futurs époux exige comme condition substantielle que le contrat ait une forme, déterminée, les parties ne peuvent se servir d'une autre forme, celle-ci fût-elle autorisée par la loi du lieu où l'acte est fait.

„Si la loi du domicile des époux ou de la situation d'immeubles appartenant à l'un d'eux exige des formalités spéciales pour que le contrat de mariage puisse être invoqué contre les tiers, cette disposition sera également applicable aux contrats passés à l'étranger ou conformément à une loi étrangère."

Ces deux articles ne donnent pas lieu à des observations.

On passe à l'article 5:

„Nonobstant les articles qui précèdent, les lois étrangères ou les dispositions du contrat passé entre époux étrangers pourront n'être pas appliquées, là où leur application serait de nature à porter atteinte, soit aux lois impératives, soit aux lois prohibitives consacrant ou garantissant un droit ou un intérêt social et déclarées par une disposition expresse applicables au régime matrimonial des époux étrangers.

„Il est également réservé à la législation intérieure de chaque pays de décider, pour ce qui concerne son territoire, si et dans quels cas des époux étrangers, domiciliés ou se trouvant sur ce territoire, seront vis-à-vis des tiers de bonne foi soumis à d'autres dispositions que celles de la loi nationale visée à l'article 1er.

„Les Etats contractants s'engagent à se communiquer les lois impératives ou prohibitives au sujet desquelles ils auraient fait usage de la faculté réservée par l'alinéa 1 du présent article."

Le Président estime qu'il serait utile de se conformer à la rédaction de l'article 7 du projet de Convention sur les successions en substituant aux mots: „pourront n'être" à l'alinéa premier ceux de: „ne seront pas".

M. Pierantoni désire faire quelques observations générales d'un caractère purement personnel.

La société conjugale relative aux biens est réglée par les conventions des parties et par la loi. On peut reconnaître la liberté des conventions; mais il y a cependant des droits et des devoirs supérieurs à la volonté des contractants. Il s'ensuit qu'aucune dérogation par voie de contrat, soit aux droits et devoirs reconnus par la loi au chef de famille et à chacun des deux époux, soit à l'ordre légal des successions, ne peut être admise. Quant à la forme, on doit reconnaître comme valable celle du pays étranger toutes les fois que le contrat est conclu à l'étranger. Mais on doit considérer avant tout que la femme va changer de nationalité par son union avec un

étranger, et qu'elle va créer une famille soumise à la nationalité du mari. Pour cette raison dominante, M. Pierantoni désire que l'article 5, au lieu de dire „pourront", soit rédigé dans un sens prohibitif et qu'il précise le respect absolu de l'ordre de la famille.

Il voit avec satisfaction que l'article 5 engage les Etats contractants à se communiquer les lois prohibitives ou impératives. Cette clause prouve que le système du projet sur la preuve des lois étrangères est réalisable.

En sa qualité de Délégué d'Italie, M. Pierantoni rappelle le système du Code de son pays sur les contrats de mariage, voir l'article 1378 et suivants. Il recommande à la Commission Néerlandaise d'en tenir compte.

Le Président répond que la Commission Néerlandaise ne manquera pas de prendre en considération les observations émises par M. Pierantoni.

En ce qui concerne l'article 5 il se demande si l'expression: „consacrant ou garantissant un droit ou un intérêt social", admise à juste titre dans l'article correspondant du projet sur les successions, ne limite pas trop, dans la matière des effets du mariage sur les biens des époux, la liberté du législateur?

M. Lainé, Rapporteur, estime qu'il est difficile en effet d'en préciser nettement la portée. La Commission Royale des Pays-Bas toutefois se trouvera en présence des différentes formules dont il a été question, et sera en mesure de fixer son choix sur celle qui lui semblera la meilleure.

M. Roguin signale un point qui pourrait donner lieu à des doutes. Il y a une législation d'après laquelle la femme est propriétaire du produit de son propre travail. Cette disposition est considérée comme étant d'ordre public dans ce pays. Même par le contract de mariage, la femme ne peut renoncer à cette propriété. M. Roguin se demande si une pareille disposition rentrerait dans l'alinéa premier de l'article 5, ou non?

M. Lainé, Rapporteur, dit que chaque Etat décidera pour lui-même. Quant à l'exemple donné par M. Roguin, il s'agit premièrement de s'entendre si une pareille disposition est en effet d'ordre social. En tout cas, la question est de très grande importance pour la Commission Néerlandaise et pour une Conférence ultérieure qui aura à décider quelle formule est la meilleure.

M. Meili demande s'il ne conviendrait pas de réserver le régime de la femme commerçante? Il désire attirer l'attention de la Commission Néerlandaise sur ce point.

Le Président est d'avis que cette question est plutôt du domaine de chaque législation spéciale.

M. Meili croit qu'un article spécial à cet effet ne serait pas inutile dans une convention.

On passe à la littéra C:

les effets du divorce et de la séparation de corps.

L'article unique est ainsi conçu.

„Les effets du divorce et de la séparation de corps, par rapport à la personne et aux biens tant des époux que des enfants nés du mariage, sont régis par la loi nationale des époux."

M. Lainé, Rapporteur, dit que la Commission, en examinant cette matière s'est occupée principalement des effets sur les biens des époux. Elle n'a pas entamé la discussion sur les effets du divorce et de la séparation de corps par rapport à la personne. C'est pour cette raison que la Commission n'a adopté l'article, qui reproduit simplement le texte proposé par le Gouvernement des Pays-Bas, que sous la réserve d'un examen ultérieur par la Commission Royale Néerlandaise.

Le Président rappelle que, lors de la Première Conférence. il avait parlé M. Renault de l'importance qu'il y aurait à réglementer par voie de convention internationale les effets du mariage sur les biens des époux. L'éminent jurisconsulte lui avait alors répondu: „C'est un bien gros morceau". Eh bien, cinq ans plus tard la Commission Néerlandaise a mis à l'étude cette matière difficile, elle a formulé son système dans un projet de Convention et elle a pu constater que tant les observations soulevées avant la Conférence et insérées dans les „Documents", que celles auxquelles a donné lieu la discussion au sein de la Sous-Commission et dans la Conférence, ne touchaient en rien aux principes.

L'admirable rapport de M. Lainé confirme encore le Président dans sa conviction qu'on pourra très bien aboutir et que rien ne s'oppose à la réglementation de la matière par une Convention internationale.

Si l'on y parvient, ce résultat sera dû à la Première Commission, à son Vice-Président, M. van den Bulcke, et à son Rapporteur, M. Lainé qui ont accompli leur tâche d'une manière tout-à-fait supérieure.

Sur la proposition du Président, la Conférence leur vote les remercîments les plus sincères.

On aborde l'examen du Protocole Final dont une épreuve a été remise à chacun de M.M. les Délégués.

M. Renault dit qu'il a, de concert avec son collègue M. Lainé soumis toutes les dispositions du Protocole à une critique des plus rigoureuses en vue d'obtenir une rédaction aussi exacte et aussi correcte que possible.

Le Président donne lecture du Protocole Final.

A l'article 4 du „Projet d'une Convention pour régler les conflits de lois en matière de mariage", M. Töry fait l'observation que l'alinéa 2 pourrait être interprété dans ce sens que les Etats contractants sont „obligés" d'accorder à leurs agents diplomatiques et consulaires la compétence de délivrer les certificats dont il est question, tandis qu'il appartient à la législation intérieure de chaque pays de réserver cette compétence aux autorités intérieures. M. le Délégué de Hongrie croit qu'il serait utile d'écarter tout doute à cet égard, soit par une déclaration émise par M. le Président et Rapporteur de la 1ère Commission et approuvée par la Conférence, soit par une modification du texte en insérant après: „consulaires" les mots suivants: „autorisés par la législation", M. Töry préférerait les second de ces systèmes.

M. Renault déclare que la Première Commission n'a nullement voulu imposer à aucun Etat l'obligation de donner à ses agents diplomatiques et consulaires la faculté de délivrer ces certificats. Il ne sera pas nécessaire de modifier le texte de l'article; il suffira que sa déclaration soit insérée au Procès-verbal de la séance.

La Conférence adopte cette manière de voir.

Après la lecture de l'article 12 du même Projet, le Président propose de laisser au Gouvernement Néerlandais le soin de modifier éventuellement l'article dans la mesure où les usages diplomatiques pourraient l'exiger. De même ce Gouvernement devrait avoir la faculté d'ajouter au Projet un dernier article concernant l'adhésion des Etats non signataires qui n'ont pas été représentés à la Conférence.

Cette proposition est adoptée.

A l'article 1 du „Projet d'une Convention pour régler les conflits de lois relativement aux successions, aux testaments et aux donations à cause de mort", M. Ort fait observer qu'on a employé le mot „régir" tandis que tous les autres Projets disent „régler". Il demande s'il y a une raison spéciale pour cette différence de terminologie?

M. Lainé répond que les deux expressions sont absolument identiques. D'ailleurs, le Projet dont il s'agit se sert partout du verbe „régir", jamais de „régler". Il n'y a donc nulle inconséquence à garder le texte tel qu'il est.

Lecture étant donnée du Vœu émis par la Conférence, M. van den Bulcke propose de substituer aux mots „certificats de lois" ceux de „certificats de coutumes", ce dernier terme étant généralement en usage dans les chancelleries.

M. Renault fait ressortir que, bien que „certificats de coutumes" soit le terme le plus usité, il est plus exact de parler de „certificats de lois". On pourrait même, en suivant le sens exact des mots, distinguer entre les „certificats de lois" et les „certificats de coutumes".

M. Pierantoni propose de dire: „certificats de lois (certificats de coutumes)".

Cette proposition est adoptée.

La séance est levée à midi.

Le Président:
Asser.

Le Premier Secrétaire;
J. J. Rochussen.

Les Secrétaires:

Beelaerts de Blokland. *T. R. J. E. Stoop.*
C. van Vollenhoven. *H. van Karnebeek.*

Annexe au Procès-verbal N° 9.

Rapport de la première Commission*) sur les dispositions, adoptées en première lecture, concernant:

A. Les effets du mariage sur l'état de la femme et des enfants.
B. Les effets du mariage sur les biens des époux.
C. Les effets du divorce et de la séparation de corps.

A. Effets du mariage sur l'état de la femme et des enfants.

Les articles dont se compose cette section et qui reproduisent purement et simplement le texte du Projet de Programme n'ont été adoptés que par 4 voix contre 1 voix et 2 abstentions. Et même ils n'ont été adoptés que sous les réserves suivantes:

1° Ce qui concerne les effets du mariage sur la capacité de la femme appartient non seulement à cette section, mais aussi à celle où il est traité des effets du mariage sur les biens des époux. Il y a, en effet, des législations, comme, par exemple, le Code civil franco-belge, qui, tout en attribuant au mariage un effet direct et indépendant du régime matrimonial sur la capacité générale de la femme, permettent, en outre, que cette capacité soit, en certains points spéciaux, modifiée par le régime matrimonial. Il y a même des législations, comme celle de l'Allemagne, qui subordonnent entièrement au régime des biens la capacité de la femme mariée.

Mais il a paru difficile de scinder ainsi la matière et désirable qu'elle soit l'objet d'une réglementation distincte. D'autre part, en présence des deux systèmes de législation qui viennent d'être indiqués, une étude plus approfondie serait nécessaire pour trouver des règles propres à les concilier. C'est pourquoi nous jugeons prudent de solliciter de la Commission Royale Néerlandaise une nouvelle élaboration de la matière.

Nous appelons, d'ailleurs, son attention sur les dispositions suivantes, qui, proposée par M. Dungs, Délégué d'Allemagne, furent Projet d'un premier vote favorable et n'ont été, en dernier lieu, écartées de l'avant-projet de convention concernant les effets du mariage sur les biens des époux que par suite des considérations ci-dessus émises: „Les restrictions produites par le mariage à l'égard de la capacité de la femme seront régies par la loi du pays auquel appartenait le mari lors de la célébration du mariage. Toutefois, au cas de changement de nationalité, si les époux peuvent faire un contrat au cours du mariage, les restrictions produites par le mariage à l'égard de la capacité de la femme seront régies par la loi nationale nouvelle, dès que les époux auront réglé leurs relations par rapport aux biens conformément à cette loi".

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*) La Première Commission, quant aux dispositions dont il s'agit, a délibéré sons la présidence de M. van den Bulcke et a désigné M. Lainé comme Rapporteur. M. Roguin, Délégué de „Suisse", a pris part à ses travaux, mais sans entrer dans la discussion des points de détail.

2° La Première Commission exprime le vœu que la Commission Royale Néerlandaise veuille bien examiner s'il ne serait pas possible de détacher de la section B („Documents", page 18) les dispositions concernant les enfants et d'en faire l'objet d'un chapitre spécial, qui compendrait aussi, conformément au premier Programme des Conférences de droit international privé, des règles concernant la paternité, la filiation, l'adoption et la puissance paternelle.

B. Effets du mariage sur les biens des époux.

Les effets du mariage sur les biens des époux se produisent directement, en vertu même de la loi, en cas d'absence de contrat; ils ont lieu indirectement, en vertu des volontés des parties intéressées, lorsque les époux ont fait un contrat de mariage. Ces deux hypothèses doivent être nettement séparées. La première est l'objet de l'article 1er. La seconde est prévue dans les articles 2, 3 et 4. La disposition de l'article 5 leur est commune.

Article 1.

„En l'absence de contrat, les effets du mariage sur les biens des époux, tant meubles qu'immeubles, se règlent d'après la loi du pays auquel appartenait le mari lorsque le mariage a été contracté"

Cette disposition est d'une importance capitale. Certains Etats, en l'adoptant, renonceront, dans leurs rapports avec les autres Etats contractants, à une jurisprudence séculaire. En France, notamment, les tribunaux, s'inspirant de l'idée que le régime matrimonial est toujours conventionnel, recherchent, en l'absence d'un contrat, l'intention probable qu'ont pu avoir les époux. Ils l'induisent des circonstances qui ont entouré le mariage. Et, si la nationalité des époux leur semble devoir être parmi ces circonstances l'une des principales, elle n'est pas la seule; d'autres sont aussi prises par eux en considération; pendant longtemps même, suivant une tradition très ancienne, ils se sont de préférence attachés au domicile matrimonial, c'est-à-dire au domicile que les époux, au moment de leur mariage, se proposaient de choisir et qu'ils ont effectivement choisi. Ce ne sera donc pas sans hésitation que ces Etats adopteront une règle nouvelle. Ils s'y détermineront surtout à raison des difficultés quotidiennes que fait naître le principe que le régime matrimonial, même en l'absence d'un contrat, est conventionnel.

Les autres Etats s'empresseront, au contraire, d'adopter la règle proposée: les uns, simplement, comme l'a dit M. de Hammarskjöld, Délégué de Suède, parce que la prépondérance de la loi nationale des époux domine toute la matière du mariage; les autres, comme l'ont déclaré M. Heemskerk, Délégué des Pays-Bas, et M. Dungs, Délégué d'Allemagne, parce que, d'après l'esprit ou même le texte de leurs lois, l'absence de contrat implique chez les époux l'absence d'intention de choisir un régime matrimonial,

M. Töry, Délégué de Hongrie, a fait savoir que dans son pays les lois concernant les relations des époux quant aux biens présentent un si grand nombre de particularités qu'elles ne sauraient guère être appliquées aux étrangers. Enfin, M. le professeur Meili, Délégué de Suisse, a déclaré que l'intention de la Suisse était d'accepter, en principe, l'application de la loi nationale des époux, sous la condition qu'on trouve un moyen efficace pour sauvegarder les intérêts des tiers. Il renvoie, sous ce rapport, à son idée de créer un registre des régimes matrimoniaux.

En conséquence, les membres présents de la Première Commission ont, à l'unanimité, adopté l'article 1er.

Ils ont été également unanimes à supprimer, comme superflu, l'article 2 du Projet de Programme, l'article 1er impliquant l'idée que le changement de nationalité des époux après le mariage laisse intact leur régime matrimonial.

Les articles 2, 3 et 4 ont en vue le cas où les époux ont fait un contrat de mariage. L'article 2 concerne la capacité des contractants; l'article 3, la validité intrinsèque et les effets du contrat; l'article 4, les formes suivant lesquelles il peut être conclu.

Article 2.

„La capacité de chacun des futurs époux pour conclure un contrat de mariage est déterminée par sa loi nationale."

Cet article n'a soulevé aucune difficulté. Il reproduit l'alinéa 1er de l'article 3 du Projet de Programme.

L'alinéa 2 du même article a été supprimé, parce que, se bornant à consacrer une conséquence nécessaire de la règle qui vient d'être posée, il a paru inutile.

Article 3.

„La validité d'un contrat de mariage et ses effets sont régis par la loi du pays auquel le mari appartenait au moment de la célébration du mariage."

Ici s'est élevée la question de savoir quelle place devait être faite à la liberté des conventions matrimoniales.

M. Lainé, Délégué de France, partant du fait que l'autonomie des parties contractantes est proclamée par la législation interne française comme le principe dominant à l'égard des conventions matrimoniales, de même que pour les conventions en général, et considérant que c'est chose rationnelle, a proposé d'en faire aussi le principe du contrat de mariage en droit international. Il a fait savoir qu'en France on ne fait pas difficulté de reconnaître aux parties le droit d'emprunter aux législations étrangères les clauses de leur contrat ou même de se soumettre par une stipulation générale à telle ou telle législation étrangère. Il a insisté surtout sur la nécessité où l'on est d'interpréter la volonté des parties d'après la loi à laquelle elles ont entendu se référer.

A cette manière de voir M. Dungs, Délégué d'Allemagne, a opposé l'idée que le contrat de mariage doit être entièrement subordonné à la loi nationale du mari M. Töry, Délégué de Hongrie, M. de Paepe, Délégué de Belgique, et M. de Hammarskjöld, Délégué de Suède, ont fait valoir, dans le même sens, que, suivant eux, la liberté des conventions matrimoniales est une règle de droit interne, non de droit international.

Un système intermédiaire a été proposé par M. Roguin, Délégué de Suisse. Il était ainsi formulé: „Le contrat de mariage est soumis, quant au fond, à la loi nationale du mari, sauf le droit pour les époux d'accepter le régime de droit commun établi au lieu de leur domicile et de la célébration du mariage."

Après discussion de ces vues diverses, un texte rédigé par MM. Dungs et Töry a prévalu, à une grande majorité, et forme l'article 3. Ce texte implique, suivant l'observation de M. le Délégué de Suède, que la règle admise demeure étrangère à l'interprétation de la volonté des parties.

Article 4.

„Le contrat de mariage est valable, quant à la forme, s'il a été conclu soit conformément à la loi du pays où il a été fait, soit conformément à celle du pays auquel appartenait le mari au moment de la célébration du mariage.

„Lorsque la loi nationale de chacun des futurs époux exige comme condition substantielle que le contrat ait une forme déterminée, les parties ne peuvent se servir d'une autre forme, celle-ci fût-elle autorisée par la loi du lieu où l'acte est fait.

„Si la loi du domicile des époux ou de la situation d'immeubles appartenant à l'un d'eux exige des formalités spéciales pour que le contrat de mariage puisse être invoqué contre les tiers, cette disposition sera également applicable aux contrats passés à l'étranger ou conformément à une loi étrangère."

La première de ces dispositions, tout en permettant l'observation de la loi locale, conformément à la maxime „locus regit actum", ne l'impose pas. Le Projet de Programme en faisait une règle impérative, et voici, d'après la Commission Royale des Pays-Bas, pour quel motif: „En raison du cactère particulier que présentent les dispositions législatives des différents pays en cette matière, l'application dans un pays étranger de la loi nationale quant à la forme des contrats pourrait susciter des inconvénients dans la pratique. Il n'y a d'ailleurs pas, ici, comme en ce qui concerne la forme des mariages et des testaments, des raisons, spéciales pour favoriser l'application de la loi nationale." Mais la Commission, pensant que les inconvénients auxquels il était fait allusion n'avaient pas une importance telle que l'on dût refuser aux futurs époux la liberté d'option réclamée pour eux par la majorité des Gouvernements représentés à la Conférence, a décidé qu'il convenait de la leur laisser et, en conséquence, que l'application de la maxime „locus regit actum" devait être, en principe, reconnue comme facultative.

Alors s'est posée une seconde question, celle de savoir dans quels cas et à quelles conditions les futurs époux pourraient se conformer à leur loi nationale de préférence à la loi locale.

M. Lainé a fait observer que l'application de la loi nationale des futurs époux ne peut se concevoir que si cette loi permet l'usage de la forme privée; car, si elle ne le permet pas, si elle exige l'intervention d'un officier public, cet officier doit nécessairement se conformer à la loi de son propre pays, sinon l'acte reçu par lui serait nul.

Là-dessus, M. Heemskerk, Délégué des Pays-Bas, a demandé si parmi les Etats représentés il en est qui admettent qu'un contrat de mariage puisse être dressé dans la forme privée. A quoi M. de Hammarskjöld a répondu que tel est le cas de la Suède, où le contrat de mariage peut être fait sans l'intervention d'un officier public, pourvu qu'il le soit par écrit devant témoins et avant le mariage.

Après cette déclaration, M. Lainé, se plaçant en vue du cas où la loi nationale des futurs époux permettrait l'usage de la forme privée, a ajouté que, si les époux étaient de nationalité différente, chacune de leurs lois devrait être observée.

Comme conclusion, M. Lainé a proposé un amendement ainsi conçu:

„La validité du contrat de mariage, quant à la forme, est déterminée par la loi du lieu où le contrat est conclu, à moins que le contrat ne soit passé dans la forme privée autorisée par la loi nationale de chacun des futurs époux, auquel cas il est également valable.“

A cet amendement M. Dungs, Délégué d'Allemagne, a opposé le suivant:

„Le contrat de mariage est valable, quant à la forme, s'il a été conclu soit conformément à la loi du pays où il a été fait, soit conformément à celle du pays auquel appartenait le mari au moment auquel le mariage a été contracté.“

M. Lainé a fait observer qu'un article ainsi concu aurait un double défaut. En premier lieu, il semblerait permettre qu'un acte public fût fait, dans un pays, contrairement aux prescriptions de la loi locale, ce qui serait la violation d'une règle de droit essentielle. En second lieu, il permettrait certainement, en ce qui concerne le contrat de mariage passé dans la forme privée, de faire prévaloir la loi du futur mari sur celle de sa future épouse et par là, suivant la remarque très juste de la Commission Royale des Pays-Bas, de porter préjudice aux intérêts de la femme.

Après ce débat, le texte proposé par M. Dungs a été adopté par cinq voix contre quatre.

Le second alinéa de l'article 4 est dû à l'initiative du Délégué de Hongrie, M. Töry, qui en a donné pour motif que l'on ne doit pas permettre aux époux d'éluder leur loi. Il a, du reste, été adopté après une modification proposée par M. de Hammarskjöld.

Le troisième alinéa, adopté à l'unanimité, reproduit l'alinéa 4, article 3 du Projet de Programme, augmenté de deux amendements, dont l'un émane de M. de Hammarskjöld, Délégué de Suède, et l'autre a été emprunté au mémoire de M. Missir, Délégué de Roumanie.

Un quatrième alinéa avait été proposé par la Commission belge pour le droit international privé et par la Commission Royale des Pays-Bas. Il portait: „Sont valables en la forme les contrats de mariage reçus, conformément à la loi nationale des futurs époux, par les agents diplomatiques ou consulaires de leur nation, pour autant que les lois de l'Etat dont ils relèvent leur confèrent cette attribution", Mais M.M. Töry et Dungs ayant mis à leur acceptation la condition que l'Etat où réside l'agent diplomatique ou consulaire ne s'oppose pas, de son côté, à l'attribution dont il s'agit, M. van den Bulcke a retiré la proposition.

Article 5.

„Nonobstant les articles qui précèdent, les lois étrangères ou les dispositions du contrat passé entre époux étrangers pourront n'être pas appliquées, là où leur application serait de nature à porter atteinte soit aux lois impératives soit aux lois prohibitives consacrant ou garantissant un droit ou un intérêt social et déclarées par une disposition expresse applicables au régime matrimonial des époux étrangers.

„Il est également réservé à la législation intérieure de chaque pays de décider, pour ce qui concerne son territoire, si et dans quels cas des époux domiciliés ou se trouvant sur ce territoire seront, vis-à-vis des tiers de bonne foi, soumis à d'autres dispositions que celles de la loi nationale visée à l'article 1er.

„Les Etats contractants s'engagent à se communiquer les lois impératives ou prohibitives au sujet desquelles ils auraient fait usage de la faculté réservée par l'alinéa 1 du présent article."

L'article 5, qui se réfère et au cas d'absence de contrat et au cas où un contrat a été fait, a pour objet de permettre à chacun des Etats contractants d'opposer aux règles précédemment admises, notamment à l'application de la loi nationale des époux, les dispositions d'ordre public de ses propres lois.

Les alinéas 1 et 3 remplacent l'alinéa 5 de l'article 3 du Projet de Programme, qui était ainsi conçu: „Les dispositions de la loi du domicile des époux ou de la situation d'immeubles appartenant à l'un d'eux, qui portent défense d'insérer dans les contrats de mariage ou qui frappent de nullité certaines clauses par rapport aux biens des époux ne sont applicables aux contrats entre époux étrangers qu'en vertu d'une stipulation expresse de la loi qui contient la défense ou la déclaration de nullité." La Commission a pensé qu'il valait mieux adopter un texte qui, tout en exprimant les mêmes idées, serait en harmonie avec l'article 5 de l'avant-projet concernant les successions,

L'alinéa 2 a été proposé par M. Dungs, Délégué d'Allemagne. Il est conçu dans la même pensée que l'alinéa 1. Mais plusieurs membres de la Commission ont déclaré n'en pas bien apercevoir la portée. Il a été adopté par 4 voix contre 3 abstentions.

Telle est, en ce qui concerne les effets du mariage sur les biens des époux, l'économie de l'avant-projet soumis par la Première Commission à la Conférence.

On remarquera que plusieurs dispositions du Projet de Programme ont été supprimées, non seulement celles dont il a déjà été fait mention, mais encore les alinéas 6 et 7 de l'article 3 et l'article 4.

L'alinéa 6 de l'article 3 portait: „La loi nationale du mari décide si les époux peuvent conclure un contrat après le mariage ou modifier ou résilier leurs conventions au cours du mariage."

Lorsque la discussion s'est ouverte sur cette disposition, plusieurs membres de la Commission, entre autres M. M. de Hammarskjöld, de Paepe, Töry, Lainé, ont été d'avis d'adopter le principe de l'immutabilité des conventions matrimoniales et de l'exprimer dans la formule proposée par la France, plus explicite que celle du Projet de Programme et ainsi conçue: „Les époux ne peuvent, soit faire un contrat de mariage après le mariage, soit modifier ou résilier leurs conventions matrimoniales, que si la loi nationale du mari au moment du mariage les y autorise."

M. Dungs, Délégué d'Allemagne, a soutenu une opinion contraire, formulée en ces termes: „Les époux peuvent conclure un contrat après le mariage ou modifier ou résilier leurs conventions au cours du mariage autant que la loi du pays auquel le mari ressortit au moment du contrat le permet"

M. Matzen, Délégué de Danemark, a déclaré se rallier à cette proposition.

De la discussion il est résulté qu'il était impossible de concilier deux systèmes aussi nettement et profondément opposés.

L'alinéa 7 de l'article 3 statuait au sujet de l'action en nullité du contrat de mariage. La Commission a pensé que, pour le contrat de mariage comme pour le mariage, il n'y avait pas lieu de s'occuper spécialement des actions en nullité.

L'article 4 du Projet de Programme portait: „Les droits des époux par rapport aux donations et aux autres actes qui peuvent intervenir entre eux au cours du mariage sont déterminés par la loi nationale du mari."

Deux raisons ont été données de supprimer cet article: 1° Il règle un point qui est distinct du régime matrimonial et qui rentrerait mieux dans un règlement général des donations. 2° Cependant, ainsi que l'a fait observer M, die Hammarkjöld, la capacité des époux à l'effet de se faire des donations ou de conclure entre eux d'autres contrats est en étroite relation avec leur capacité de constituer ou de modifier le régime de leurs biens après leur mariage. La suppression de l'alinéa 6 de l'article 3 entraîne donc celle de l'article 4.

Il importe, enfin, de faire connaître une proposition émanée de M. Roguin, Délégué de Suisse, qui s'est produite au cours des travaux de la Commission et qui, dans une certaine mesure, a le caractère d'un contre-projet.

Elle fut d'abord formulée dans l'exposé qui se trouve inséré comme annexe au présent rapport, puis dans un texte ainsi conçu: „Immédiatement avant la célébration du mariage, les époux dont le futur est étranger seront interrogés par l'officier de l'état civil ou tout autre fonctionnaire désigné à cet effet dans l'Etat de la célébration. Sur son interpellation, ils feront connaître s'ils ont conclu un contrat de mariage. — En cas affirmatif, ce contrat sera soumis à la loi nationale du futur époux. — Dans le cas négatif, ils pourront, devant le même officier ou fonctionnaire, déclarer se soumettre au régime de droit commun de l'Etat du mariage, s'il est en même temps celui de leur premier domicile matrimonial. — En l'absence de la déclaration mentionnée au deuxième alinéa, le régime matrimonial sera celui de la loi nationale du futur époux. — Dans les trois cas, des mentions succinctes destinées à faire connaître, soit le contrat, soit le régime, seront faites dans l'acte dressé par l'officier ou le fonctionnaire."

La proposition fut ensuite, en séance, réduite aux termes suivants: „Les époux peuvent, par une simple déclaration faite, soit devant l'officier de l'état civil, soit devant tout autre fonctionnaire désigné „ad hoc" dans le pays de leur domicile et du mariage, adopter conventionnellement l'un des régimes organisés par la législation de ce dernier pays. Le contrat demeure soumis, quant au fond, à la loi nationale du futur époux."

Deux idées se dégagent de ce système.

1° Il convient de tempérer ce qu'a d'excessif l'adoption pure et simple de la loi nationale du mari comme loi du régime des biens des époux. Que cette règle reçoive pleine et entière application en l'absence de toute manifestation de volonté, soit! Cependant il ne faut pas qu'elle soit une cause d'erreur, au moment du mariage, et de déception, par la suite, pour les femmes qui épousent des étrangers dans leur pays. Si ces femmes ne font point de contrat de mariage, c'est peut-être parce qu'elles veulent éviter des démarches, une perte de temps et des frais, et c'est probablement aussi parce que dans leur pensée elles s'en remettent à leur propre loi pour la protection de leurs intérêts. Il est bien difficile d'écarter absolument l'idée que les futurs époux, en l'absence de contrat, se réfèrent tacitement à une loi déterminée. Les interpellations dont parle M. Roguin ne seraient-elles pas de nature à appeler l'attention des parties sur des conséquences de leur mariage auxquelles elles ne songent pas? Et pourquoi ne pas admettre qu'une déclaration soit équivalente à un contrat de mariage?

2° Il serait peut-être possible, comme le pense M. Roguin, d'établir pour les contrats de mariage des étrangers une certaine publicité, en s'inspirant, après lui, de la loi française du 10 juillet 1850.

La proposition de M. Roguin, n'a pas été admise par la Commission. Elle empièterait, a-t-on dit, sur le domaine des lois nationales en leur prescrivant une forme de célébration du mariage. D'autre part, il y a des législations qui ne permettent pas aux époux de se référer, en termes

généraux, quant à leur régime matrimonial, à une loi étrangère. Peut-être aussi l'échec de cette proposition est-il dû à sa nouveauté. Il semble qu'elle mérite d'être recommandée à l'attention de la Commission Royale des Pays-Bas en vue d'une nouvelle étude des effets du mariage sur les biens des époux. La Commission, d'ailleurs, en a émis le vœu en ce qui concerne la publicité que pourraient recevoir les contrats de mariage.

C. Effets du divorce et de la séparation de corps.

Le Gouvernement des Pays-Bas avait proposé d'insérer dans l'avant-projet concernant le divorce et la séparation de corps un article 5 bis ainsi conçu: „Les effets du divorce et de la séparation de corps par rapport à la personne et aux biens tant des époux que des enfants nés du mariage, sont régis par la loi nationale des époux."

Cet article a été distrait de l'avant projet relatif au divorce et à la séparation de corps et rattaché à l'examen de l'avant-projet concernant les effets du mariage sur les biens des époux.

Tout d'abord, la Commission a décidé que ce qui est relatif aux biens des enfants doit être renvoyé à un chapitre ultérieur.

Quant aux biens des époux, M. le Délégué de Suède a recommandé l'adoption du principe suivant: „Les effets du divorce et de la séparation de corps par rapport aux biens des époux sont régis par la loi du pays auquel appartenait le mari au moment de la célébration du mariage." Il ne faut pas, a-t-il dit, que le mari puisse, en changeant de nationalé, substituer à la loi contemporaine de la célébration du mariage une loi qui lui serait plus favorable. Mais il lui a été répondu par M. Heemskerk, Délégué des Pays-Bas, que la situation peut être la suivante: à l'époque du mariage, la loi nationale du mari n'admettait pas le divorce; les époux changent de nationalité et le divorce est prononcé sous l'empire de la nouvelle loi. Dans ce cas, les effets du divorce ne sauraient être régis par une loi qui, n'admettant pas le divorce, n'en règle pas les conséquences.

M. de Hammarskjöld a reconnu la justesse de cette observation. Toutefois, l'idée sur laquelle était fondé son amendement mérite aussi d'être prise en considération. Il a donc été entendu que la Commission Royale des Pays-Bas serait priée de vouloir bien rechercher s'il serait possible au moyen d'une autre rédaction d'en tenir compte.

En conséquence la Commission a adopté les textes suivants:

A. Effets du mariage sur l'état de la femme et des enfants.*)

Article 1.

Les effets du mariage sur l'état et la capacité de la femme, ainsi que sur l'état de leurs enfants qui seraient nés avant le mariage, se règlent d'après la loi du pays auquel appartenait le mari lorsque le mariage a été contracté.

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*) Les divers articles relatifs à cette matière reproduisent le texte du Projet de Programme. La Commission ne les a adoptés que sous réserve d'un examen ultérieur par la Commission Royale des Pay-Bas pour le Droit International Privé.

Article 2.

Les droits et les devoirs du mari envers la femme et de la femme envers le mari sont déterminés par la loi nationale du mari. Toutefois, ils ne peuvent être sanctionnés que par les moyens que permet également la loi du pays où la sanction est requise.

Article 3.

En cas de changement de nationalité du mari seul, les rapports des époux restent régis par leur dernière loi nationale commune. Mais l'état des enfants nés depuis le changement de nationalité est régi par la loi nationale nouvelle du père.

B. Effets du mariage sur les biens des époux.

Article 1. (Voir article 1 du Projet de Programme.)

En l'absence de contrat, les effets du mariage sur les biens des époux, tant meubles qu'immeubles, se règlent d'après la loi du pays auquel appartenait le mari lorsque le mariage a été contracté.

Article 2. (V. art. 3, al. 1, Proj. de Progr.)

La capacité de chacun des futurs époux pour conclure un contrat de mariage est déterminée par sa loi nationale.

Article 3. (Article nouveau.)

La validité d'un contrat de mariage et ses effets sont régis par la loi du pays auquel le mari appartenait au moment de la célébration du mariage.

Article 4. (V. art. 3, al. 3 et 4, Proj. de Progr.)

Le contrat de mariage est valable, quant à la forme, s'il a été conclu, soit conformément à la loi du pays où il a été fait, soit conformément à celle du pays auquel appartenait le mari au moment de la célébration du mariage.

Lorsque la loi nationale de chacun des futurs époux exige comme condition substantielle que le contrat ait une forme déterminée, les parties ne peuvent se servir d'une autre forme, celle-ci fût-elle autorisée par la loi du lieu où l'acte est fait.

Si la loi du domicile des époux ou de la situation d'immeubles appartenant à l'un d'eux exige des formalités spéciales pour que le contrat de mariage puisse être invoqué contre les tiers, cette disposition sera également applicable aux contrats passés à l'étranger ou conformément à une loi étrangère.

Article 5. (V. art. 3, al. 5, Proj. de Progr.)

Nonobstant les articles qui précèdent, les lois étrangères ou les dispositions du contrat passé entre époux étrangers pourront n'être pas appliquées, là où leur application serait de nature à porter atteinte soit aux lois impératives soit aux lois prohibitives consacrant ou garantissant un

droit ou un intérêt social et déclarées par une disposition expresse applicables au régime matrimonial des époux étrangers.

Il est également réservé à la législation intérieure de chaque pays de décider, pour ce qui concerne son territoire, si et dans quels cas des époux domiciliés ou se trouvant sur ce territoire seront, vis-à-vis des tiers de bonne foi, soumis à d'autres dispositions que celles de la loi nationale visée à l'article 1er.

Les Etats contractants s'engagent à se communiquer les lois impératives ou prohibitives au sujet desquelles ils auraient fait usage de la faculté réservée par l'alinéa 1 du présent article.

C. Effets du divorce et de la séparation de corps.

Article unique.*)

Les effets du divorce et de la séparation de corps, par rapport à la personne et aux biens tant des époux que des enfants nés du mariage, sont régis par la loi nationale des époux.

Le Rapporteur: *A. Lainé.*

Le Vice-Président. *van den Bulcke.*

Annexe au Rapport de la première Commission.

Comme M. Meili l'a exposé en séance plénière de la Conférence, le Gouvernement Fédéral estime qu'il y aurait lieu d'adopter, si possible, un système quelconque destiné à fixer clairement entre époux et à faire connaître aux tiers le „régime matrimonial".

M. Meili a fait connaître à la Conférence l'un des moyens auxquels on peut avoir recours, celui consistant à établir un „registre des régimes nuptiaux."

M. Roguin, en son nom personnel et en celui du Conseil Fédéral, attire également l'attention de la Commission sur un autre moyen, encore plus simple, et qui serait le suivant:

Avant de célébrer l'union de deux époux dont le futur serait étranger, l'officier de l'état civil les interpellerait sur la question de leur régime matrimonial. Les époux répondraient:

1° Ou qu'ils auraient fait un „contrat de mariage", auquel cas cette convention serait „soumise à la loi uationale du mari"; et la mention abrégée en serait faite dans l'acte de mariage;

2° Ou qu'ils adopteraient le „régime légal" du pays „de la célébration du mariage et du domicile des époux", auquel cas mention dans ce sens serait faite dans l'acte de marige;

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*) Cet article est la reproduction pure et simple du texte proposé par le Gouvernement des Pays-Bas. La Commission ne l'a adopté que sous réserve d'un examen ultérieur par la Commission Royale des Pays-Bas pour le droit International Privé.

3° Ou enfin, qu'ils préféreraient demeurer soumis à la „loi nationale du mari“, ce dont mention serait également faite.

De cette manière, deux résultats seraient atteints:

a) Le régime matrimonial des époux étrangers serait toujours „fixé“ avec une entière certitude et „connu d'eux-mêmes.“

b) Le régime pourrait assez facilement être „connu des tiers“, qui ont toujours le droit de consulter les actes de l'état civil.

Il serait entendu que, dans l'hypothèse de la soumission volontaire des époux à la loi du domicile, cette législation ferait seule règle, même dans le cas de disposition impératives de la loi nationale. La déclaration des époux dans le même sens serait une sorte de contrat de mariage simplifié, „ne coûtant rien“.

Si la Commission et la Conférence adoptaient ce système, des „avantages pratiques considérables“ seraient attaints. Une foule d'hésitations et de difficultés disparaîtraient.

Eventuellement, ce système pourrait se combiner avec celui du registre des régimes matrimoniaux.

Ernest Roguin,
Délégué de Suisse.

N.B. L'idée maîtresse de la combinaison est empruntée à la loi française de 1850, dite loi Valette.

Procès-verbal n° 10. Séance de clôture (18 juin 1900.)

La séance est ouverte à 5 heures.

Sont présents:

M.M. Asser, Président, Dungs, Kriege, Schumacher, Töry, van den Bulcke, Matzen, Oliver y Esteller, de Monbel, Renault, Lainé, le baron Galvagna, Pierantoni, Thorn, Rahusen, Feith, Heemskerk, Ort, le comte de Selir, Missir, de Martens, Goussakowsky, de Hammarskjöld, Beichmann, Meili et Roguin.

Sont également présents:

Son Exc. M. Cort van der Linden, Ministre de la Justice, ainsi que M.M. Ruyssenaers, Envoyé extraordinaire et Ministre plénipotentiaire, Secrétaire Général du Ministère des Affaires Etrangères, et le Jonkheer van Beyma, Secrétaire Général du Ministère de la Justice.

Le Président donne lecture du Protocole Final.

M. Matzen fait la déclaration suivante: „Avant la signature du Protocole Final, je désire faire l'observation que je signerai en me rapportant à la réserve générale précisée dans la déclaration de mon Gouvernement concernant l'adoption du régime de la loi nationale au lieu de la loi du domicile à présent en vigueur en Danemark.“

M. Beichmann déclare faire la même réserve générale que M. Matzen, la législation norvégienne étant sur ce point identique à la législation danoise.

Le Président donne acte à M.M. les Délégués de Danemark et de Norvège de leurs déclarations.

Le Président prie M.M. les Délégués de vouloir bien à tour de rôle procéder à la signature du Protocole Final.

Après la signature de ce document le Président prononce le discours suivant:

Messieurs,

Vous venez de signer le Protocole Final de la Troisième Conférence de Droit International Privé.

Dans ce protocole Vous avez consigné quatre projets concernant des matières de la plus grande importance et Vous l'avez fait dans l'espoir que bientôt, par la haute sanction de Vos Gouvernements, ces projets deviendront des Conventions qui régleront pour les Etats représentés à la Conférence une grande partie du droit de famille international.

Ce résultat sera sans doute très satisfaisant, mais, tout en le constatant avec reconnaissance, nous n'oublions pas qu'il nous reste encore beaucoup à faire si nous voulons un jour atteindre d'une manière complète le but que nous nous sommes proposé.

C'est pleins de reconnaissance que nous regardons en arrière et que nous résumons dans nos pensées les résultats acquis dans cette Conférence, qui bientôt aussi appartiendra à l'histoire, mais cela ne nous empêche pas de songer à l'avenir.

Eh bien! Messieurs, permettez-moi de Vous le dire. Dans le premier des vœux qui terminent le Protocole Final que Vous venez de signer je lis une expression qui est due à l'initiative d'un de nos estimés collègues étrangers et qui m'a fait éprouver une bien vive satisfaction.

On y parle du „procédé heureusement suivi" pour la préparation de la Conférence actuelle et cette expression a obtenu l'approbation de tous nos chers collègues.

J'y vois pour le Gouvernement et pour la Commission Royale des Pays-Bas un précieux encouragement pour continuer de suivre la méthode inaugurée en vue de la troisième Conférence.

Si l'idée de la codification du droit international privé est une innovation dont la réalisation complète semble réservée aux jeunes d'entre nous, la méthode aussi que nous venons d'introduire diffère essentiellement de celle qu'on a suivi jusqu'à présent.

D'un côté, d'après cette méthode, le Gouvernement des Pays-Bas et notre Commission Royale ont à exercer une assez grande influence sur les travaux de la Conférence par le fait qu'ils ont à prendre l'initiative des projets; d'un autre côté, cette influence, en ce qu'elle aurait d'excessif, se trouve contrebalancée par la critique exercée, même avant l'ouverture d'une Conférence, par les Gouvernements étrangers.

Le résultat de l'application de cette méthode, c'est qu'avant l'ouverture de chaque Conférence, on peut se rendre compte des différents systèmes en présence et des points qui, pour chaque matière, formeront l'objet des discussions les plus importantes.

Si pour nos travaux futurs j'osais exprimer un vœu, ce serait que l'exemple donné par les Gouvernements de Belgique, de France et de Russie,

qui, à l'instar de ce qui a été fait par les Pays-Bas, ont institué des Commissions permanentes, fût suivi dans tous les autres Etats, et qu'entre toutes ces Commissions pussent s'établier des relations directes.

On poserait de cette manière les bases d'une organisation internationale qui, tout en respectant la parfaite autonomie des Etats et en laissant intacte l'indépendance des législateurs nationaux, contribuerait puissamment à faire obtenir, dans un délai relativement court, la codification du droit international privé et faciliterait aussi la modification des dispositions déjà arrêtées, à l'égard desquelles l'expérience aurait démontré l'utilité d'une modification.

Espérons que Vous tous, Messieurs, ne cesserez de vouer Votre haute intelligence, Votre zèle infatigable et Votre dévouement éprouvé à la cause qui nous est chère.

Ce sera la meilleure garantie de succès.

En Vous remerciant de tout ce que Vous avez fait pour faire réussir cette Conférance, je ne veux pas manquer de répéter avant la clôture de Vos travaux, ce que j'ai déjà dit dans une de nos séances, par rapport au Secrétariat. Malgré la besogne exceptionnellement laborieuse et fatigante dont ils étaient chargés, Messieurs les Secrétaires, sous l'habile direction de M. le Jonkheer Rochussen, le Secrétaire de la Commission Royale des Pays-Bas, n'ont cessé de s'acquitter de leur tâche d'une manière vraiment admirable.

Je leur adresse, au nom de la Conférence, les remercîments les plus chaleureux.

Et Vous, Messieurs les Délégués des Etats représentés ici, chers et honorés collégues, permettez que ma dernière parole soit une parole de gratitude pour la grande bienveillance, la parfaite courtoisie, la cordialité qui a toujours régné dans Vos débats et par lesquelles Vous avez rendu la tâche du Président aussi facile qu'agréable.

M. le Comte de Selir s'exprime en ces termes:

Messieurs,

Au moment de nous séparer, j'accomplis un devoir qui m'est particulièrement agréable, celui d'exprimer à notre honoré Président tous nos remercîments pour la manière si habile et courtoise avec laquelle il à dirigé nos travaux. Notre tâche n'a pas été facile. A chaque instant, nous nous sommes heurtés à des difficultes qui, au premier abord, parraissaient insurmontables, mais grâce à l'esprit de conciliation dont nous étions animés nous avons pu, presque dans tous les cas, trouver la formule acceptable pour tous.

Nous osons croire, Messieurs, que le Gouvernement Néerlandais nous saura gré d'avoir secondé ses efforts, et qu'il trouvera dans les résultats obtenus par la Troisième Conférence, l'encouragement nécessaire pour mener à bonne fin la tâche qu'il a si noblement entreprise.

Remercions donc Monsieur le Ministre de la Justice d'avoir bien voulu honorer notre dernière séance de sa présence et espérons qu'il voudra être l'interprête de notre vœu auprès de ses Collègues.

Vous tiendrez aussi, Messieurs, j'en suis sur, à remercier de la bonne hospitalité qui nous a été offerte par le peuple Néerlandais. Pendant notre séjour ici, nous avons reçu de toute part des témoignages d'estime et de considération. Nous en sommes profondément reconnaissants, et notre reconnaissance ne pourrait pas se témoigner d'une manière plus sensible aux Néerlandais qu'en souhaitant à leur jeune et gracieuse Souveraine un long régne prospère et glorieux.

Son Excellence M. Cort van der Linden, Ministre de la Justice, prononce le discours suivant:

Messieurs,

Mon collègue le Ministre des Affaires Etrangères m'a charge de Vous témoigner son vif regret de ne pouvoir assister à Votre dernière séance. Vous me permettrez dès lors de remercier, au nom du Gouvernement Néerlandais, M. le comte de Selir des bons sentiments et des gracieuses paroles qu'il a bien voulu exprimer pour Sa Majesté la Reine, ma gracieuse Souveraine, et pour le Gouvernement des Pays-Bas.

Je tiens à ajouter encore quelques mots. Vous voilà, Messieurs, arrivés à la fin de Vos travaux. Vous avez accompli une tâche très difficile: celle de trouver pour des principes généralement approuvés des formes concrètes acceptables pour tous, et des règles pratiques. Nous savons que toute œuvre de législation aboutit à la fin aux questions épineuses de détail et de rédaction. Toutefois, il convient de ne pas oublier que de Vos discussions se dégage une idée très haute et noble: celle de la solidarité humaine. En travaillant ainsi ensemble, aussi bien que dans l'intimité d'un commerce amical Vous n'avez pu manquer de ressentir un peu la réalité de l'avenir, car dans ces jours se perd de plus en plus l'impression de la distance qui sépare les hommes de différentes nationalités, et le sentiment se renouvelle que nous appartenons tous à une seule famille qui sera un jour une seule humanité, guidée par une seule justice.

C'est en m'inspirant de ces idées que je tiens à renouveler l'assurance de la gratitude du Gouvernement des Pays-Bas, tant envers Vos Gouvernements pour le concours qu'ils lui ont prêté et pour le choix qu'ils ont fait de Vous, Messieurs, comme Délégués à cette Conférence qu'envers Vous-mêmes pour Votre activité, Votre travail et Votre dévouement.

Le Président après avoir remercié S. E. M. le Ministre de la Justice ainsi que M.M. les Secrétaires Généraux du Ministère des Affaires Etrangères et du Ministère de la Justice de leur présence, déclare close la Troisième Conférence de Drait International Privé.

La séance est levée à 6 heures.

Le Président:
Asser.

Le Premier Secrétaire:
J. J. Rochussen.

Les Secrétaires:

Beelaerts de Blokland. *T. R. J. E. Stoop.*
C. van Vollenhoven. *H. van Karnebeek.*

Protocole Final.

Les soussignés, Délégués des Gouvernements d'Allemagne, d'Autriche de Hongrie, de Belgique, de Danemark, d'Espagne, de France, d'Italie, de Luxembourg, des Pays-Bas, de Portugal, de Roumanie, de Russie, de Suède, de Norvège et de Suisse, se sont réunis à la Haye, le 29 Mai 1900, sur l'invitation du Gouvernement des Pays-Bas, dans le but d'arriver à une entente sur divers points de droit international privé,

A la suite des délibérations consignées dans les procèsverbaux des séances et sous les réserves qui y sont exprimées, ils sont convenus de soumettre à l'appréciation de leurs Gouvernements les projets de Conventions suivants:

I. Projet d'une Convention pour régler les conflits de lois en matière de mariage.

. . . . . .

. . . . . .

Désirant établir des dispositions communes pour régler les conflits de lois concernant les conditions pour la validité du mariage,

Ont résolu de conclure une Convention à cet effet et ont en conséquence nommé pour Leurs plénipotentiaires, savoir:

. . . . . .

. . . . . .

lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:

Article 1.

Le droit de contracter mariage est réglé par la loi nationale de chacun des futurs époux, à moins qu'une disposition de cette loi ne se réfère expressément à une autre loi.

Article 2.

La loi du lieu de la célébration peut interdire le mariage des étrangers qui serait contraire à ses dispositions concernant:

1° les degrés de parenté ou d'alliance pour lesquels il y a une prohibition absolue;

2° la prohibition absolue de se marier, édictée contre les coupables de l'adultère à raison duquel le mariage de l'un d'eux a été dissous;

3° la prohibition absolue de se marier, édictée contre des personnes condamnées pour avoir de concert attenté à la vie du conjoint de l'une d'elles.

Le mariage célébré contrairement à une des prohibitions mentionnées ci-dessus ne sera pas frappé de nullité, pourvu qu'il soit valable d'après la loi indiquée par l'article 1er.

Sous la réserve de l'application du premier alinéa de l'article 6 de la présente Convention, aucun Etat contractant ne s'oblige à faire célébrer un mariage qui, à raison d'un mariage antérieur ou d'un obstacle d'ordre

religieux, serait contraire à ses lois. La violation d'un empêchement de cette nature ne pourrait pas entraîner la nullité du mariage dans les pays autres que celui où le mariage a été célébré.

Article 3.

La loi du lieu de la célébration peut permettre le mariage des étrangers nonobstant les prohibitions de la loi indiquée par l'article 1er, lorsque ces prohibitions sont exclusivement fondées sur des motifs d'ordre religieux.

Les autres Etats ont le droit de ne pas reconnaître comme valable le mariage célébré dans ces circonstances.

Article 4.

Les étrangérs doivent, pour se marier, établir qu'ils remplissent les conditions nécessaires d'après la loi indiquée par l'article 1er.

Cette justification se fera, soit par un certificat des agents diplomatiques ou consulaires du pays des contractants, soit par tout autre mode de preuve, pourvu que les conventions internationales ou les autorités du pays de la célébration reconnaissent la justifiation comme suffisante.

Article 5.

Sera reconnu partout comme valable, quant à la forme, le mariage célébré suivant la loi du pays où il a eu lieu.

Il est toutefois entendu que les pays dont la législation exige une célébration religieuse, pourront ne pas reconnaître comme valables les mariages contractés par leurs nationaux à l'étranger sans que cette prescription ait été observée.

Les dispositions de la loi nationale, en matière de publications devront être respectées; mais le défaut de ces publications ne pourra pas entraîner la nullité du mariage dans les pays autres que celui dont la loi aurait été violée.

Une copie authentique de l'acte de mariage sera transmise aux autorités du pays de chacun des époux.

Article 6.

Sera reconnu partout comme valable, quant à la forme, le mariage célébré devant un agent diplomatique ou consulaire, conformément à sa législation, si aucune des parties contractantes n'est ressortissante de l'Etat où le mariage a été célébré et si cet Etat ne s'y oppose pas. Il ne peut pas s'y opposer quand il s'agit d'un mariage qui, à raison d'un mariage antérieur ou d'un obstacle d'ordre religieux, serait contraire à ses lois.

La réserve du second alinéa de l'article 5 est applicable aux mariages diplomatiques et consulaires.

Article 7.

Le mariage, nul quant à la forme dans le pays où il a été célébré, pourra néanmoins être reconnu comme valable dans les autres pays, si la forme prescrite par la loi nationale de chacune des parties a été observée.

Article 8.

La présente Convention ne s'applique qu'aux mariages célébrés sur le territoire des Etats contractants entre personnes dont une au moins est ressortissante d'un de ces Etats.

Aucun Etat ne s'oblige, par la présente Convention, à appliquer une loi qui ne serait pas celle d'un Etat contractant.

Article 9.

La présente Convention, qui ne s'applique qu'aux territoires européens des Etats contractants, sera ratifiée et les ratifications en seront déposées à La Haye dès que la majorité des Hautes Parties contractantes sera en mesure de le faire.

Il sera dressé de ce dépôt un procès-verbal, dont une copie, certifiée conforme, sera remise par la voi diplomatique à tous les Etats contractants.

Article 10.

Les Etats non signataires qui ont été représentés à la troisième Conférence de Droit International Privé sont admis à adhérer purement et simplement à la présente Convention.

L'Etat qui désire adhérer notifiera, au plus tard le . . . . . son intention par un acte qui sera déposé dans les archives du Gouvernement des Pays-Bas. Celui-ci en enverra des copies, certifiées conformes, par la voie diplomatique à chacun des Etats contractants.

Article 11.

La présente Convention entrera en vigueur le 60ième jour à partir du dépôt des ratifications ou de la date de la notification des adhésions.

Article 12.

La présente Convention aura une durée de cinq ans à partir de la date du dépot des ratifications.

Ce terme commencera à courir de cette date, même pour les Etats qui auront fait le dépôt après cette date ou qui auraient adhéré plus tard.

La Convention sera renouvelée tacitement de cinq ans en cinq ans, sauf dénonciation.

La dénonciation devra être notifiée, au moins six mois avant l'expiration du terme visé aux alinéas précédents, au Gouvernement des Pays-Bas, qui en donnera connaissance à tous les autres Etats contractants.

La dénonciation ne produira son effet qu'à l'égard de l'Etat qui l'aura notifiée. La Convention restera exécutoire pour les autres Etats.

II. Projet d'une Convention pour régler les conflits de lois et de juridictions en matière de divorce et de séparation de corps.

. . . . . .

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Désirant établir des dispositions communes pour règler les conflits de lois et de juridictions en matière de divorce et de séparation de corps,

Ont résolu de conclure une Convention à cet effet et ont en conséquence nommé pour Leurs plénipotentiaires, savoir:

. . . . . .

. . . . . .

lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des disposition suivantes:

Article 1.

Les époux ne peuvent former une demande en divorce que si leur loi nationale et la loi du lieu où la demande est formée admettent le divorce l'une et l'autre.

Il en est de même de la séparation de corps.

Article 2.

Le divorce ne peut être demandé que si, dans le cas dont il s'agit, le divorce est admis à la fois par la loi nationale des époux et par la loi du lieu où la demande est formée.

Il en est de même de la séparation de corps.

Article 3.

Nonobstant les dispositions des articles 1er et 2, la loi nationale sera seule observée si la loi du lieu où la demande est formée le prescrit ou le permet.

Article 4.

La loi nationale indiquée par les articles précédents ne peut être invoquée pour donner à un fait qui s'est passé alors que les époux ou l'un d'eux étaient d'une autre nationalité, le caractère d'une cause de divorce ou de séparation de corps.

Article 5.

La demande en divorce ou en séparation de corps peut être formée:

1° devant la juridiction compétente d'après la loi nationale des époux:

2° devant la juridiction compétente du lieu où les époux sont domiciliés. Si, d'après leur législation nationale, les époux n'ont pas le même domicile, la juridiction compétente est celle du domicile du défendeur. Dans le cas d'abandon et dans le cas d'un changement de domicile opéré après que la cause de divorce ou de séparation est intervenue, la demande peut aussi être formée devant la juridiction compétente du dernier domicile commun. — Toutefois, la juridiction nationale est réservée dans la mesure où cette juridiction est seule compétente pour la demande en divorce ou en séparation de corps. La juridiction étrangère reste compétente pour un mariage qui ne peut donner lieu à une demande en divorce ou en séparation de corps devant la juridiction nationale compétente.

Article 6.

Dans le cas où des époux ne sont pas autorisés à former une demande en divorce ou en séparation de corps dans le pays où ils sont domiciliés, ils peuvent néanmoins l'un et l'autre s'adresser à la juridiction compétente

de ce pays pour solliciter les mesures provisoires que prévoit sa législation en vue de la cessation de la vie en commun. Ces mesures seront maintenues si, dans le délai d'un an, elles sont confirmées par la juridiction nationale; elles ne dureront pas plus longtemps que ne le permet la loi du domicile.

Article 7.

Le divorce et la séparation de corps, prononcés par un tribunal compétent aux termes de l'article 5, seront reconnus partout, sous la condition que les clauses de la présente Convention aient été observées et que, dans le cas où la décision aurait été rendue par défaut, le défendeur ait été cité conformément aux dispositions spéciales exigées par sa loi nationale pour reconnaître les jugements étrangers.

Seront reconnus également partout le divorce et la séparation de corps prononcés par une juridiction administrative, si la loi de chacun des époux reconnaît ce divorce et cette séparation.

Article 8.

Si les époux n'ont pas la même nationalité, leur dernière législation commune devra, pour l'application des articles précédents, être considérée comme leur loi nationale.

Article 9.

La présente Convention ne s'applique qu'aux demandes en divorce ou en séparation de corps formées dans l'un des Etats contractants, si l'un des plaideurs au moins est le ressortissant d'un de ces Etats.

Aucun Etat ne s'oblige, par la présente Convention, à appliquer une loi qui ne serait pas celle d'un Etat contractant.

Article 10.

La présente Convention, qui ne s'applique qu'aux territoires européens des Etats contractants, sera ratifiée et les ratifications en seront déposées à La Haye dès que la majorité des Hautes Parties contractantes sera en mesure de le faire.

Il sera dressé de ce dépôt un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à tous les Etats contractants.

Article 11.

Les Etats non signataires qui ont été représentés à la troisième Conférence de Droit International Privé sont admis à adhérer purement et simplement à la présente Convention.

L'Etat qui désire adhérer notifiera, au plus tard le . . . . . son intention par un acte qui sera déposé dans les archives du Gouvernement des Pays-Bas. Celui-ci en enverra des copies, certifiées conformes, par la voie diplomatique à chacun des Etats contractants.

Article 12.

La présente Convention entrera en vigueur le 60ième jour à partir du dépôt des ratifications ou de la date de la notification des adhésions.

Article 13.

La présente Convention aura une durée de cinq ans à partir de la date du dépôt des ratifications.

Ce terme commencera à courir de cette date, même pour les Etats qui auront fait le dépôt après cette date ou qui auraient adhéré plus tard.

La Convention sera renouvelée tacitement de cinq ans en cinq ans, sauf dénonciation.

La dénonciation devra être notifiée, au moins six mois avant l'expiration du terme visé aux alinéas précédents, au Gouvernement des Pays-Bas, qui en donnera connaissance à tous les autres Etats contractants.

La dénonciation ne produira son effet qu'a l'égard de l'Etat qui l'aura notifiée. La Convention restera exécutoire pour les autres Etats.

III. Projet d'une Convention pour régler les conflits de lois et de juridictions relativement à la tutelle des mineurs.

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Désirant établir des dispositions communes pour régler la tutelle des mineurs,

Ont résolu de conclure une Convention à cet effet et ont en conséquence nommé pour Leurs plénipotentiaires, savoir;

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. . . . . .

lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:

Article 1.

La tutelle d'un mineur est réglée par sa loi nationale.

Article 2.

Si la loi nationale n'organise pas la tutelle dans le pays du mineur en vue du cas où celui-ci aurait sa résidence habituelle à l'étranger, l'agent diplomatique ou consulaire autorisé par la loi de l'Etat auquel le mineur ressortit pourra y pourvoir, conformément à cette loi, si l'Etat de la résidence habituelle du mineur ne s'y oppose pas.

Article 3.

Toutefois, la tutelle du mineur ayant sa résidence habituelle à l'étranger s'établit et s'exerce conformément à la loi du lieu, si elle n'est pas ou si elle ne peut pas être constituée conformément aux dispositions de l'article 1er ou de l'article 2.

Article 4.

L'existence de la tutelle établie conformément à la disposition de l'article 3 n'empêche pas de constituer une nouvelle tutelle par application de l'article 1er ou de l'article 2.

Il sera, le plus tôt possible, donné information de ce fait au Gouvernement de l'Etat où la tutelle a d'abord été organisée. Ce Gouvernement

en informera, soit l'autorité qui aurait institué la tutelle, soit, si une telle autorité n'existe pas, le tuteur lui-même.

La législation de l'Etat où l'ancienne tutelle était organisée décide à quel moment cette tutelle cesse dans le cas prévu par le présent article.

Article 5.

Dans tous les cas la tutelle s'ouvre et prend fin aux époques et pour les causes déterminées par la loi nationale du mineur.

Article 6.

L'administration tutélaire s'étend à la personne et à l'ensemble des biens du mineur, quel que soit le lieu de leur situation.

Cette règle peut recevoir exception quant aux immeubles placés par la loi de leur situation sous un régime foncier spécial.

Article 7.

En attendant l'organisation de la tutelle, ainsi que dans tous les cas d'urgence, les mesures nécessaires pour la protection de la personne et des intérêts d'un mineur étranger seront prises par les autorités locales.

Article 8.

Les autorités d'un Etat sur le territoire duquel se trouvera un mineur étranger dont il importera d'établir la tutelle, informeront de cette situation, dès qu'elle leur sera connue, les autorité de l'Etat auquel le mineur ressortit.

Les autorités ainsi informées feront connaître le plus tôt possible aux autorités qui auront donné l'avis si la tutelle a été ou sera établie.

Article 9.

La présente Convention nes 'applique qu'à la tutelle des mineurs ressortissants d'un des Etats contractants, qui ont leur résidence habituelle sur le territoire d'un de ces Etats.

Toutefois, les articles 7 et 8 de la présente Convention s'appliquent à tous les mineurs ressortissants des Etats contractants.

Article 10.

La présente Convention, qui ne s'applique qu'aux territoires européens des Etats contractants, sera ratifiée et les ratifications en seront déposées à La Haye dès que la majorité des Hautes Parties contractantes sera en mesure de le faire.

Il sera dressé de ce dépôt un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à tous les Etats contractants.

Article 11.

Les Etats non signataires qui ont été représentés à la troisième Conférence de Droit International Privé sont admis à adhérer purement et simplement à la présente Convention.

L'Etat qui désire adhérer notifiera, au plus tard le . . . . . , son intention par un acte qui sera déposé dans les archives du Gouvernement des Pays-Bas. Celui-ci en enverra des copies, certifiées conformes, par la voie diplomatique à chacun des Etats contractants.

Article 12.

La présente Convention entrera en vigueur le 60ième jour à partir du dépôt des ratifications ou de la date de la notification des adhésions.

Article 13.

La présente Convention aura une durée de cinq ans à partir de la date du dépôt des ratifications.

Ce terme commencera à courir de cette date, même pour les Etats qui auront fait le dépôt après cette date ou qui auraient adhéré plus tard.

La Convention sera renouvelée tacitement de cinq ans en cinq ans, sauf dénonciation.

La dénonciation devra être notifiée, au moins six mois avant l'expiration du terme visé aux alinéas précédents, au Gouvernement des Pays-Bas, qui en donnera connaissance à tous les autres Etats contractants.

La dénonciation ne produira son effet qu'à l'égard de l'Etat qui l'aura notifiée. La Convention restera exécutoire pour les autres Etats.

IV. Projet d'une Convention pour régler les conflits de lois relativement aux successions, aux testaments et aux donations à cause de mort.

. . . . . .

. . . . . .

Désirant établir des dispositions communes concernant les successions, les testaments et les donations à cause de mort,

Ont résolu de conclure une Convention à cet effet et ont en conséquence nommé pour Leurs plénipotentiaires, savoir:

. . . . . .

. . . . . .

lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:

Article 1.

Les successions sont soumises à la loi nationale du défunt, quels que soient la nature des biens et le lieu où ils se trouvent.

La validité intrinsèque et les effets des dispositions testamentaires ou des donations à cause de mort sont régis par la loi nationale du disposant.

Article 2.

Les testaments et les donations à cause de mort sont valables, en ce qui concerne la forme, s'ils satisfont aux prescriptions, soit de la loi du lieu où ils sont faits, soit de la loi du pays auquel appartenait le disposant au moment où il disposait.

Néanmoins, lorsque, pour les donations ou pour les testaments faits par une personne hors de son pays, la loi nationale de cette personne exige, comme condition substantielle, que l'acte ait une forme déterminée par cette loi nationale, le testament ou la donation ne peut être fait dans une autre forme.

Sont valables en la forme les testaments des étrangers, s'ils ont été reçus, conformément à leur loi nationale, par les agents diplomatiques ou consulaires de leur nation. La même règle s'applique aux donations à cause de mort.

Article 3.

La capacité de disposer par testament ou par donation à cause de mort est régie par la loi nationale du disposant.

Article 4.

La loi nationale du défunt ou du disposant est celle du pays auquel il appartenait au moment de son décès.

Néanmoins, la capacité du disposant est soumise aussi à la loi du pays auquel il appartient au moment où il dispose.

Toutefois, si le disposant avait dépassé l'âge de la capacité fixé par la loi du pays auquel il appartenait au moment de la disposition, le changement de nationalité ne lui fait pas perdre cette capacité à raison de l'âge.

Article 5.

La capacité des successibles, des légataires et des donataires est régie par leur loi nationale.

Article 6.

Les immeubles héréditaires et ceux légués ou donnés sont soumis à la loi du pays de leur situation, en ce qui concerne les formalités et les conditions de publicité que cette loi exige pour la constitution, la consolidation, le transfert et l'extinction des droits réels, ainsi que pour la possession vis-à-vis des tiers.

Article 7.

Nonobstant les articles qui précèdent, la loi nationale du défunt ne sera pas appliquée lorsqu'elle serait de nature à porter atteinte, dans le pays où l'application devrait en avoir lieu, soit aux lois impératives soit aux lois prohibitives consacrant ou garantissant un droit ou un intérêt social, déclarées par une disposition expresse applicables aux successions, aux donations à cause de mort et aux testaments des étrangers.

Est également réservée l'application des lois territoriales qui ont pour but d'empêcher la division des propriétés rurales.

Les Etats contractants s'engagent à se communiquer les lois prohibitives ou impératives au sujet desquelles ils auraient fait usage de la faculté réservée par l'alinéa 1, ainsi que les lois territoriales dont il s'agit dans l'alinéa 2.

Article 8.

Sans préjudice des dispositions faites dans les limites fixées par la loi nationale du défunt, il ne sera admis aucun prélèvement ni aucune inégalité au profit des nationaux des Etats contractants à raison de la nationalité des successibles, des légataires ou des donataires appartenant à ces Etats.

Article 9.

Les autorités de l'Etat sur le territoire duquel la succession s'est ouverte prendront les mesures nécessaires pour assurer la conservation des

biens héréditaires, à moins qu'il n'y soit pourvu, en vertu de conventions spéciales, par le agents diplomatiques ou consulaires de la nation à laquelle le défund appartenait.

Article 10.

Les Etats contractants conservent leur liberté de régler ce qui concerne la séparation des patrimoines, l'acceptation sous bénéfice d'inventaire, la renonciation et la responsabilité des héritiers vis-à-vis des tiers.

Article 11.

La présente Convention ne s'applique que dans le cas où le défunt, au moment de son décès, appartenait à un des Etats contractants.

Chaque Etat contractant a la faculté d'exclure l'application de la présente Convention en ce qui concerne les successions de ses nationaux qui, lors de leur décès, auraient leur domicile dans un Etat non contractant.

Article 12.

La présente Convention, qui ne s'applique qu'aux territoires européens des Etats contractants, sera ratifiée et les ratifications en seront déposées à La Haye dès que la majorité des Hautes Parties contractantes sera en mesure de le faire.

Il sera dressé de ce dépôt un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à tous les Etats contractants.

Article 13.

Les Etats non signataires qui ont été représentés à la troisième Conférence de Droit International Privé sont admis à adhérer purement et simplement à la présente Convention.

L'Etat qui désire adhérer notifiera, au plus tard le . . . . . ., son intention par un acte qui sera déposé dans les archives du Gouvernement des Pays-Bas. Celui-ci en enverra des copies, certifiées conformes, par la voie diplomatique à chacun des Etats contractants.

Article 14.

La présente Convention entrera en vigueur le 60ième jour à partir du dépôt des ratifications ou de la date de la notification des adhésions.

Article 15.

La présente Convention aura une durée de cinq ans à partir de la date du dépôt des ratifications.

Ce terme commencera à courir de cette date, même pour les Etats qui auront fait le dépot après cette date ou qui auraient adhéré plus tard.

La Convention sera renouvelée tacitement de cinq ans en cinq ans, sauf dénonciation.

La dénonciation devra être notifiée, au moins six mois avant l'expiration du terme visé aux alinéas précédents, au Gouvernement des Pays-Bas, qui en donnera connaissance à tous les autres Etats contractants.

La dénonciation ne produira son effet qu'à l'égard de l'Etat qui l'aura notifiée. La Convention restera exécutoire pour les autres Etats.

La Conférence, en outre, a émis le vœu:

1° Que le Gouvernement des Pays-Bas transmette, quand il le jugera opportun, les rapports et les avant-projets concernant les „Effets du mariage sur l'état de la femme et des enfants", les „Effets du mariage sur les biens des époux", les „Effets du divorce et de la séparation de corps", la „Tutelle des majeurs", la „Faillite" et la „Délivrance de certificats de lois (certificats de coutumes)", aux Etats représentés à la troisième Conférence de Droit International Privé, en y ajoutant un projet de programme et en invitant lesdits Etats à communiquer leurs observations sur ce projet, suivant le procédé qui a été heureusement suivi pour la préparation de la Conférence actuelle, afin que ce projet de programme puisse faire l'objet des délibérations d'une quatrième Conférence de Droit International Privé;

2° Que la compétence des tribunaux en matière de successions, de testaments et de donations à cause de mort fasse l'objet d'une entente ultérieure.

Fait à La Haye, le dix huit juin Mil Neuf Cent en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont une copie légalisée sera remise par la voie diplomatique à chaque Gouvernement représenté à la Conférence.

Pour l'Allemagne:	*Hermann Dungs.*
	Johannes Kriege.
Pour l'Autriche-Hongrie:	Pour l'Autriche:
	Franz Schumacher.
	Pour la Hongrie:
	Töry.
Pour la Belgique:	*Alfred van den Bulcke.*
Pour le Danemark:	*Henning Matzen.*
Pour l'Espagne:	*Bienvenido Oliver y Esteller.*
Pour la France:	*Monbel. L. Renault. A. Lainé.*
Pour l'Italie:	*F. Galvagna. A. Pierantoni.*
Pour le Luxembourg:	*Thorn.*
Pour les Pays-Bas:	*T. M. C. Asser. E. N. Rahusen.*
	P. R. Feith. Th. Heemskerk. B. Ort.
Pour le Portugal:	*Comte de Selir.*
Pour la Roumanie:	*Pierre Th. Missir.*
Pour la Russie:	*Martens.* } Sous les réserves expresses, consignées dans les procès-verbaux Nos. IV et VII.
	Goussakowsky. }
Pour la Suède:	*Hj. L. Hammarskjöld.*
Pour la Norvège:	*Beichmann.*
Pour la Suisse:	*F. Meili. Ernest Roguin.*

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